

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY CODE TO ADD A NEW SECTION 25-8-27 RELATING TO REDEVELOPMENT IN THE BARTON SPRINGS ZONE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 25-8 (*Environment*) of the City Code is amended to add a new Section 25-8-27 to read:

§ 25-8-27 REDEVELOPMENT EXCEPTION IN THE BARTON SPRINGS ZONE.

- (A) This section applies to property that has existing development and is located in the Barton Springs Zone.
- (B) This section supersedes Article 12 (*Save Our Springs Initiative*), to the extent of conflict.
- (C) In this section:
 - (1) SEDIMENTATION/FILTRATION POND means water quality controls that comply with Section 25-8-213 (*Water Quality Control Standards*), except for Subsection (D); and
 - (2) SOS POND means water quality controls that comply with all requirements of Section 25-8-213 (*Water Quality Control Standards*) and the pollutant removal requirements of Section 25-8-514(A) (*Pollution Prevention Required*).
- (D) The requirements of this subchapter do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:
 - (1) The redevelopment may not increase the existing amount of impervious cover on the site.

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- (2) The redevelopment may not increase non-compliance, if any, with Section 25-8-261 (*Critical Water Quality Zone Development*), Section 25-8-281 (*Critical Environmental Features*), Section 25-8-282 (*Wetland Protection*), Section 25-8-482 (*Critical Water Quality Zone*), or Section 25-8-483 (*Water Quality Transition Zone*).
 - (3) The redevelopment must comply with Section 25-8-184 (*Additional Erosion and Sedimentation Control Requirements in the Barton Springs Zone*).
 - (4) The water quality controls on the redevelopment site must provide a level of water quality treatment that is equal to or greater than that which was previously provided.
 - (5) For a commercial or multifamily redevelopment, the owner or operator must obtain a permit under Section 25-8-233 (*Barton Springs Zone Operating Permit*) for both sedimentation/filtration ponds and SOS ponds.
 - (6) For a site with more than 40 percent net site area impervious cover, the redevelopment must have:
 - (a) sedimentation/filtration ponds for the entire site; or
 - (b) if approved by the director of the Watershed Protection and Development Review Department, SOS ponds for a portion of the site, and sedimentation/filtration ponds for the remainder of the site.
 - (7) For a site with 40 percent or less net site area impervious cover, the redevelopment must have SOS ponds for the entire site.
 - (8) The property owner must mitigate the effects of the redevelopment, if required by and in accordance with Subsection (G).
- (E) City Council approval of a redevelopment in accordance with Subsection (F) is required if the redevelopment:

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2
3 (1) will increase the number of dwelling units in a multi-family
4 development by more than 25 percent;

5
6 (2) is inconsistent with a neighborhood plan; or

7
8 (3) will generate more than 2,000 vehicle trips a day above the estimated
9 traffic level based on the most recent authorized use on the property.

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11 (F) City Council shall consider the following factors in determining whether to
12 approve a proposed redevelopment:

13
14 (1) benefits of the redevelopment to the community;

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16 (2) whether the proposed mitigation or manner of development offsets the
17 potential environmental impact of the redevelopment;

18
19 (3) the effects of offsite infrastructure requirements of the redevelopment;
20 and

21
22 (4) compatibility with the city's long-range planning goals.

23
24 (G) Redevelopment of property under this section requires the purchase or
25 restriction of mitigation land if the site has a sedimentation/filtration pond.

26
27 (1) The combined gross site area impervious cover of the mitigation land
28 and the portion of the redevelopment site treated by
29 sedimentation/filtration ponds may not exceed 20 percent.

30
31 (2) The mitigation requirement may be satisfied by:

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33 (a) paying into the Barton Springs Zone Mitigation Fund an
34 amount established by ordinance;

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36 (b) transferring to the City in accordance with Paragraph (3)
37 mitigation land approved by the director of the Watershed
38 Protection and Development Review Department within a
39 watershed that contributes recharge to Barton Springs, either
40 inside or outside the City's jurisdiction;
41

- 1 (c) placing restrictions in accordance with Paragraph (3) on
2 mitigation land approved by the director of the Watershed
3 Protection and Development Review Department within a
4 watershed that contributes recharge to Barton Springs, either
5 inside or outside the City's jurisdiction; or
6
7 (d) a combination of the mitigation methods described in
8 Subparagraphs (a) – (c), if approved by the director of the
9 Watershed Protection and Development Review Department.
10
11 (3) A person redeveloping land under this section shall pay all costs of
12 restricting the land or transferring the land to the City, including the
13 costs of:
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15 (a) an environmental site assessment without any further
16 recommendations for clean-up, certified to the City not earlier
17 than the 120th day before the closing date transferring land to
18 the City;
19
20 (b) a category 1(a) land title survey, certified to the City and the
21 title company not earlier than the 120th day before the closing
22 date transferring land to the City;
23
24 (c) a title commitment with copies of all Schedule B and C
25 documents, and an owner's title policy;
26
27 (d) a fee simple deed, or, for a restriction, a restrictive covenant
28 approved as to form by the city attorney;
29
30 (e) taxes prorated to the closing date;
31
32 (f) recording fees; and
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34 (g) charges or fees collected by the title company.
35
36 (H) The Watershed Protection and Development Review Department shall
adopt rules to identify criteria for director approval under this section to
ensure that the proposed mitigation, manner of development, and water
quality controls offset the potential environmental impact of the
redevelopment.

PART 2. The Barton Springs Zone Mitigation Fund is established. The director of the Watershed Protection and Development Review Department may allocate money from

1 the Barton Springs Zone Mitigation Fund for the purchase of fee title or restrictions on
2 property within a watershed that contributes recharge to Barton Springs, either inside or
3 outside the City of Austin's jurisdiction, or for maintenance of the land.
4

5 **PART 3.** The fee for mitigation under Section 25-8-27 (*Redevelopment Exception in the*
6 *Barton Springs Zone*) is equal to the number of mitigation acres multiplied by
7 \$15,000.00. The fee shall be adjusted annually and increased by 3 percent each year
8 beginning January 1, 2009.

9 **PART 4.** This ordinance takes effect on _____, 2007.

10
11 **PASSED AND APPROVED**
12
13
14

15 _____, 2007

16
17 Will Wynn
18 Mayor
19

20 **APPROVED:**

21 David Allan Smith
22 City Attorney
23

ATTEST:

Shirley A. Gentry
City Clerk

Environmental Board Questions and Staff Responses to Questions Concerning the Barton Springs Zone (BSZ) Redevelopment Ordinance

1. It has been stated that a large percentage of the impact of development on natural ecosystems occurs during the construction phase. How will the redevelopment proposed in this Ordinance revision prevent environmental damage from occurring or even improve the environment?

- *Construction-phase sedimentation a problem, but answer more complex.* We agree that a large percentage of sediment is discharged from a site during the construction phase. Even the best designed temporary erosion and sedimentation controls can be overwhelmed by large storms. WPDR continues to examine improved ways to control construction related impacts, including the addition of an additional environmental inspector in Fiscal Year 2007-08. However, consider the following discussion items:
 - *Channel erosion a major source of sediment.* The most significant long-term source of sediment in urbanizing streams is not from uplands sources but rather from the stream channel itself. Since much of the existing impervious cover is not treated by structural water quality controls, the opportunity exists for redevelopment to actually reduce in-stream erosion by providing hydrologic control with structural controls.
 - *Benefits of permanent water quality controls is significant.* Concerns with construction-phase impacts must be put in context with long-term impacts of the completed site. Most properties to be redeveloped with the proposed ordinance have either no or poor structural water quality controls. These sites will continue to lack adequate controls until redevelopment occurs and they are installed. Structural controls reduce a wide variety of pollutants which routinely emanate from developed sites, such as nutrients (phosphorus, nitrogen), hydrocarbons (oil, grease, etc.), and other toxics (metals, pesticides, etc.). Retrofitting in permanent controls through redevelopment to remove these pollutants will actually improve current water quality rather than just preventing further degradation.
 - *No greater damage from redeveloped than new, "greenfields" properties.* Any construction erosion occurring from redevelopment projects would be no different from that which would have occurred with redevelopment under the current rules or on a greenfield site on previously undeveloped land. All would involve opening up a site with the risk of a large rainfall event occurring which exceeds the capacity of the required erosion & sedimentation controls. While this does represent a level of risk, highly impervious sites with no permanent water quality controls represent the certainty of erosive flows and wide range of exported pollutants.
 - *Better to disturb a currently developed site than a greenfield.* Market demand will encourage a given square footage of land disturbance. If the proposed ordinance is not implemented, this disturbance will most likely occur on greenfields sites. The ordinance will give the option to developers to redevelop an existing, already disturbed site.

- *No construction impacts—or permanent stormwater impacts—on mitigation land.* The proposed ordinance requires the purchase of mitigation lands. Construction impacts on these properties (in many cases 2 to 4 times larger than the developed site) will be permanently avoided. This is especially useful in that some of these lands are in areas outside the City of Austin's jurisdiction and do not always have the same level of construction inspection and oversight as do projects within Austin's jurisdiction.
 - *Characteristics of redevelopment sites reduce construction impacts.* Our GIS mapping analysis shows that the sites most likely to redevelop under the proposed ordinance have the following characteristics:
 - Already graded and cleared—thus much less need for cut & fill and thus less vulnerable to construction-phase problems than equivalent greenfield sites requiring cut & fill.
 - Mostly flat sites—of the 199 commercial and office properties, 2% of the total area has slopes greater than 15%. About half of those steep slopes are on the Barton Creek Square Mall site.)
 - Mostly small in area—86% of sites are less than 5 acres; smaller areas are generally less susceptible to construction erosion problems.
2. The redevelopment proposed in the Ordinance may generate additional vehicle trips or other related pollutant emitting activities. How does this proposed Ordinance revision account for this in improving the overall health of the aquifer/watershed?
- *Structure of proposed ordinance will help prevent sprawl and reduce vehicle trips.* Most of the affected redevelopment sites are located along existing, urbanized corridors, such as Hwy. 71/290 and near existing, relatively urbanized areas. The redeveloped sites will reduce vehicle trips by providing more current services to local residents, who would otherwise have to drive further to, for example, the Village of Bee Cave, Dripping Springs, or Sunset Valley to access equivalent services. Meanwhile, the mitigation lands will be likely purchased on the outer edge of the existing developed area, preventing further low-density sprawl in these areas.
 - *Proposed ordinance can achieve lower regional imperviousness and impacts.* The current redevelopment ordinance requires that a large amount of impervious cover be removed from a site and/or that land-intensive structural controls be retrofit onto the site. This form of tract-by-tract "retrofit" of the SOS Ordinance has not been embraced. (For example, no known projects have been proposed to remove meaningful quantities of impervious cover after more than 16 years.) During the Advisory Group leading to the proposed ordinance, members of the development community clearly stated that removal of impervious cover from the existing developed sites was an economic "nonstarter"—it reduced the viability of the properties, many of which are too small to consider a reduction in footprint. Continuation of this existing approach will likely result in the permanence of the status quo, with no or outdated water quality controls and no land set-aside.

The proposed ordinance is expressly designed to meet the spirit and function of the SOS ordinance: a balance of structural controls with low overall impervious cover. It also is designed such that some may actually implement its provisions. It essentially "retrofits" the SOS Ordinance into areas that previously had neither on-site controls nor impervious cover limits. The long-term imperviousness of the BSZ will be lowered as a result. Without this proposed ordinance, the lands otherwise set aside as mitigation lands would be subject to development and impervious cover (potentially at a higher level of impact beyond the City of Austin's jurisdiction).

- *Certainty of on-site benefits vs. potential for cumulative off-site impacts.* Concerns have been raised that by redeveloping currently developed properties, additional ancillary development will result which will pollute downstream creeks and the aquifer. On a site level, the properties redeveloping under the proposed ordinance currently generate vehicle trips, activity, and pollution which in great measure pollute the creeks and aquifer now. This ordinance will help correct this problem. Development off-site may occur as a direct result of the ordinance; it will be difficult to determine if such development would have occurred "anyway" or not. But such development will be subject to the SOS ordinance or, in a minority of cases, grandfathered regulations. Most (greater than 80% within the City's jurisdiction) will be required to install SOS-level, non-degradation controls and all will have to install at least TCEQ level structural controls. We believe that the elimination of uncontrolled discharges and pollution from existing development and the avoidance of future pollution from the mitigation lands outweighs the increased pollution risk associated with increased vehicle trips and activity.
 - *Existing SOS Ordinance does not address density or traffic.* Neither projects complying with the existing SOS Ordinance nor projects complying with proposed redevelopment ordinance address density or traffic volumes.
3. §25-8-27 (D) (4): "The water quality controls on the redevelopment site must provide a level of water quality treatment that is equal to or greater than that which was previously provided." What if the previous development did not have water quality controls on it? This appears to not address that situation.
- *All sites must have controls; provision prevents backsliding in specialized cases.* This requirement was included for limited cases where a site currently has over 40% impervious cover and SOS-level controls to ensure the site could not downgrade their level of water quality control to sediment-filtration upon redeveloping. Under requirement (5), a site with no water quality controls must upgrade to sediment-filtration (if over 40% IC) or SOS-level controls (if under 40% IC). No site would be able to redevelop without at least a sediment/filtration pond.
4. Can bonding be required for erosion control to pay for cleanup of damage if erosion controls fail?
- *System already in place.* Projects currently must post fiscal prior to site plan approval for temporary and permanent erosion and sedimentation control. This

fiscal can be drawn and used to install temporary erosion and sedimentation controls and revegetation of the site to City of Austin specifications.

- *Actions to correct damage.* The fiscal cannot be used for off-site cleanup of damage if the erosion controls fail. However, a discharge of sediment in the Barton Springs Zone is a priority violation and a Stop Work Order may be issued. Under the Stop Work Order, all City inspections are halted. If compliance is not achieved, complaints are filed in Municipal Court.

5. Can construction phasing be required to reduce the footprint of land exposed to erosion at a given time?

- *Construction phasing currently a recommendation.* Section 1.4.0 of the Environmental Criteria Manual makes recommendations to designers to limit the size of disturbed areas to the greatest extent possible, revegetate disturbed areas as rapidly as possible, minimize access points, and utilize temporary sediment trapping. When these methods are placed on the approved site plan, they can be enforced. WPDR is currently considering mechanisms to increase the effectiveness of our erosion and sedimentation controls.

Barton Springs Zone Land Area

Barton Springs Zone watersheds	100%	375 sq mi
Recommended Open Space	90%	277.5 sq mi
Recommended max impervious cover	10%	37.5 sq mi
Existing impervious cover (from Matt Hollon)	about 6%	22.5 sq mi
Difference		15 sq mi

How Many Houses will be developed under current land use policies

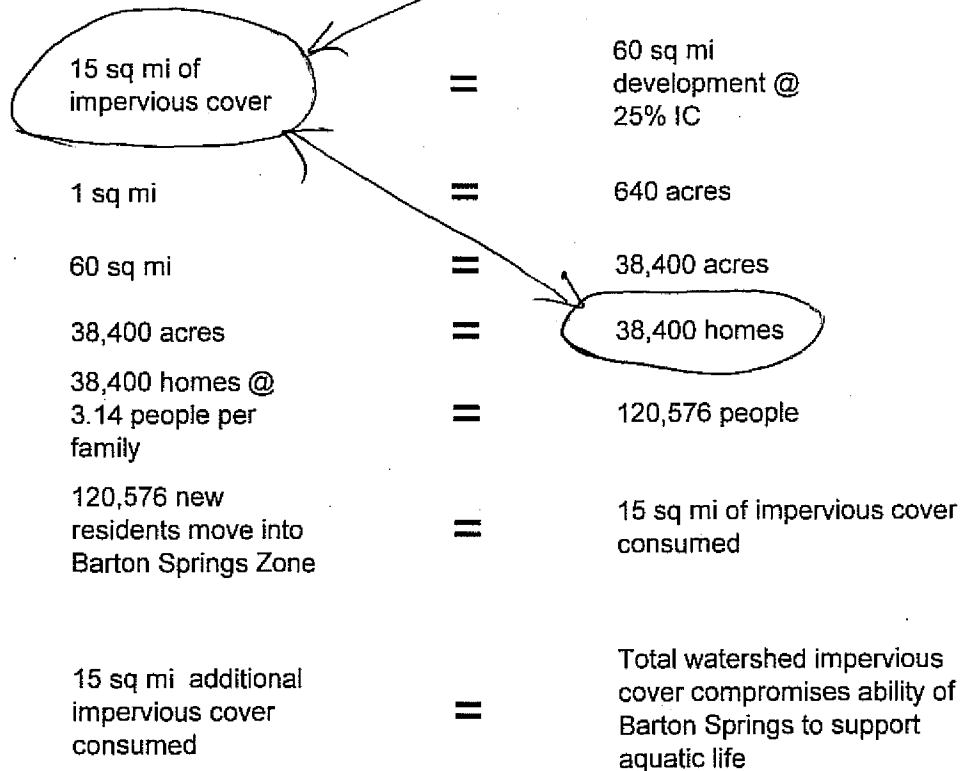


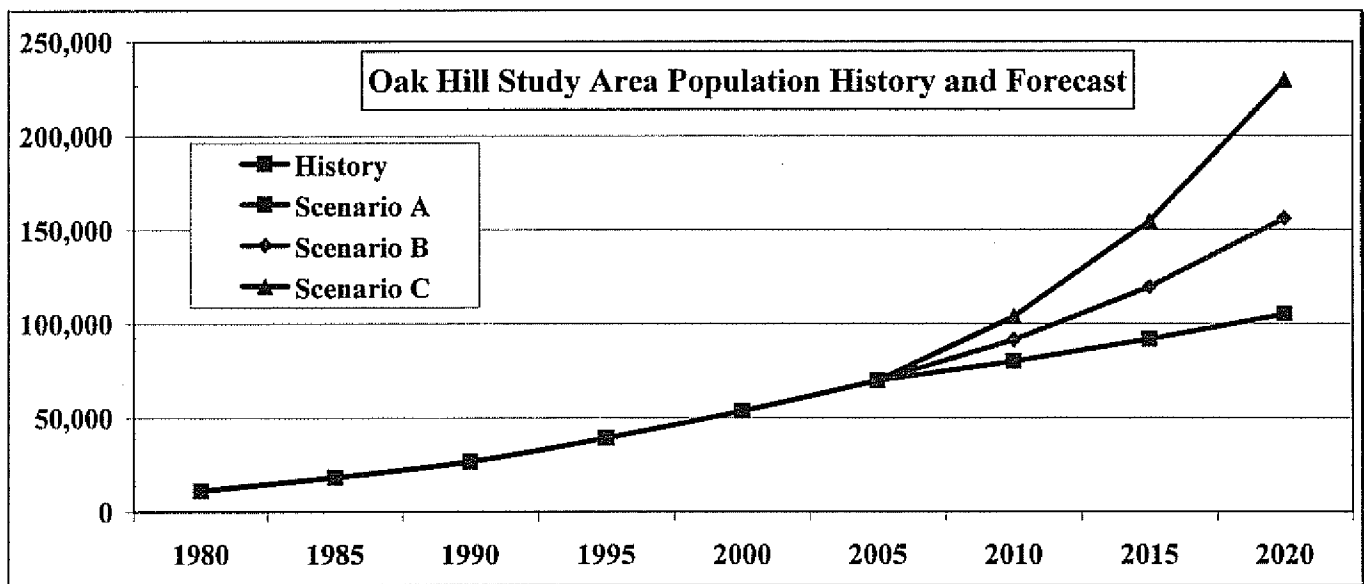
Table 1

Oak Hill Study Area
Population History and Provisional Trends Population Forecast
Summary Table

Year	Population	Annualized Growth Rate	Forecast Scenario A	Annualized Growth Rate	Forecast Scenario B	Annualized Growth Rate	Forecast Scenario C	Annualized Growth Rate
1980	11,123							
1990	26,631	9.1%						
2000	53,586	7.2%						
2005	69,916	5.5%						
2010			80,073	2.75%	91,378	5.50%	103,924	8.25%
2015			91,706		119,427		154,474	
2020			105,028		156,086		229,613	

SOURCES:

1. Decennial data figures are from the US Census Bureau.
2. Year 2005 figure is an estimate based on housing activity within the study area from 2000 to May 2005.
3. Forecast figures for the three scenarios are produced using the methodology discussed in detail in the Forecast Methodology.



Data source: Ryan Robinson demographic analysis and projection from CoA May 2005

Annualized Growth Rate	Population	Annualized Growth Rate	Population Added	Forecast Population
1980	11,123		This color COA numbers jive with 5 year intervals	
1990	26,631	9.10%		
2000	53,586	7.20%		

	Current Population		Scenario "B"			Total Oak Hill Population
			Population growth			
			Annual	Cumulative	New Homes	
2005	69,916	5.50%				
2006			3845	3845	1225	73761
2007			4057	7902	2517	77818
2008			4280	12182	3880	82098
2009			4515	16698	5318	86614
2010			4764	21461	6835	91377
2011			5026	26487	8435	96403
2012			5302	31789	10124	101705
2013			5594	37383	11905	107299
2014			5901	43285	13785	113201
2015			6226	49511	15768	119427
2016			6568	56079	17860	125995
2017			6930	63009	20067	132925
2018			7311	70320	22395	140236
2019			7713	78033	24851	147949
2020	End of CoA study		8137	86170	27443	156086
2021			8585	94755	30177	164671
2022			9057	103811	33061	173727
2023			9555	113366	36104	183282
2024			10081	123447	39314	193363
2025			10635	134082	42701	203998
2026			11220	145302	46274	215218
2027			11837	157139	50044	227055
2028			12488	169627	54021	239543
2029			13175	182802	58217	252718
2030			13899	196701		266617
Total increase			196701			

> 38,400

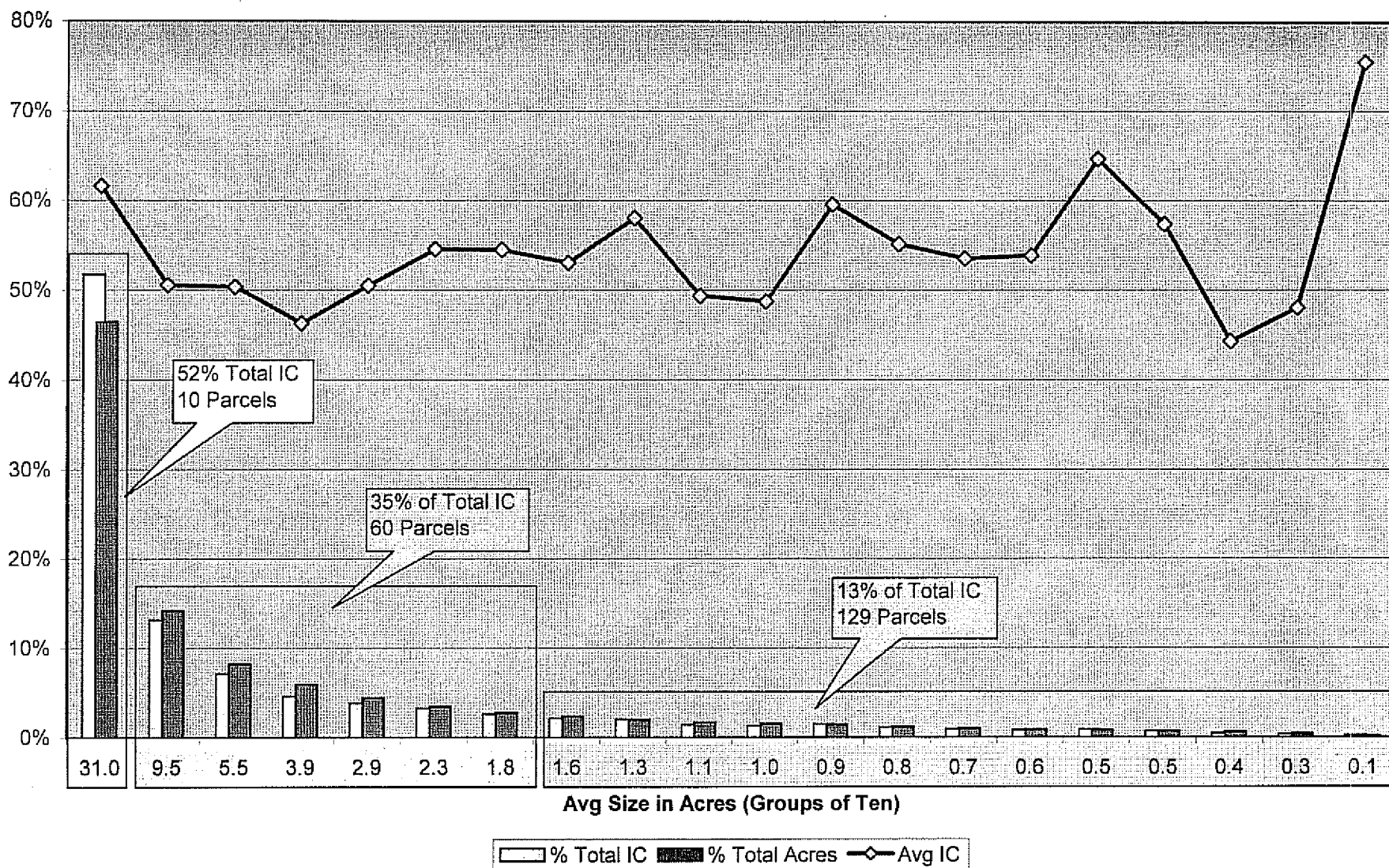
Barton Springs Zone Land Area

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Difference		15 sq mi

Open Space

CoA	16662 acres	
HHC	2200	
BCCP	7000 (estimate)	
	25862 total acres	
Existing	40.4 total Sq Miles	15%
Total needed	277.5 sq mi	
Existing Open Space	40.4 sq mi	
Needed Open Space	237.1 sq mi	
In acres	151,738 acres	
Estimated price / acre	\$15,000	
To purchase \$	2.276 Billion	by 2024

199 Parcels Non-Compliant with SOS Ranked by Size



Source: Lettingwell BSA

Clustering Development in a TOD Must Concurrently Preserve Open Space

living units	unit(s) / acre	acres developed	IC %	acres IC	
38400	1	38400	25%	9600.00	100% sprawl
38400	8	4800	65%	3120.00	33% of sprawl
38400	15	2560	65%	1664.00	17% of sprawl

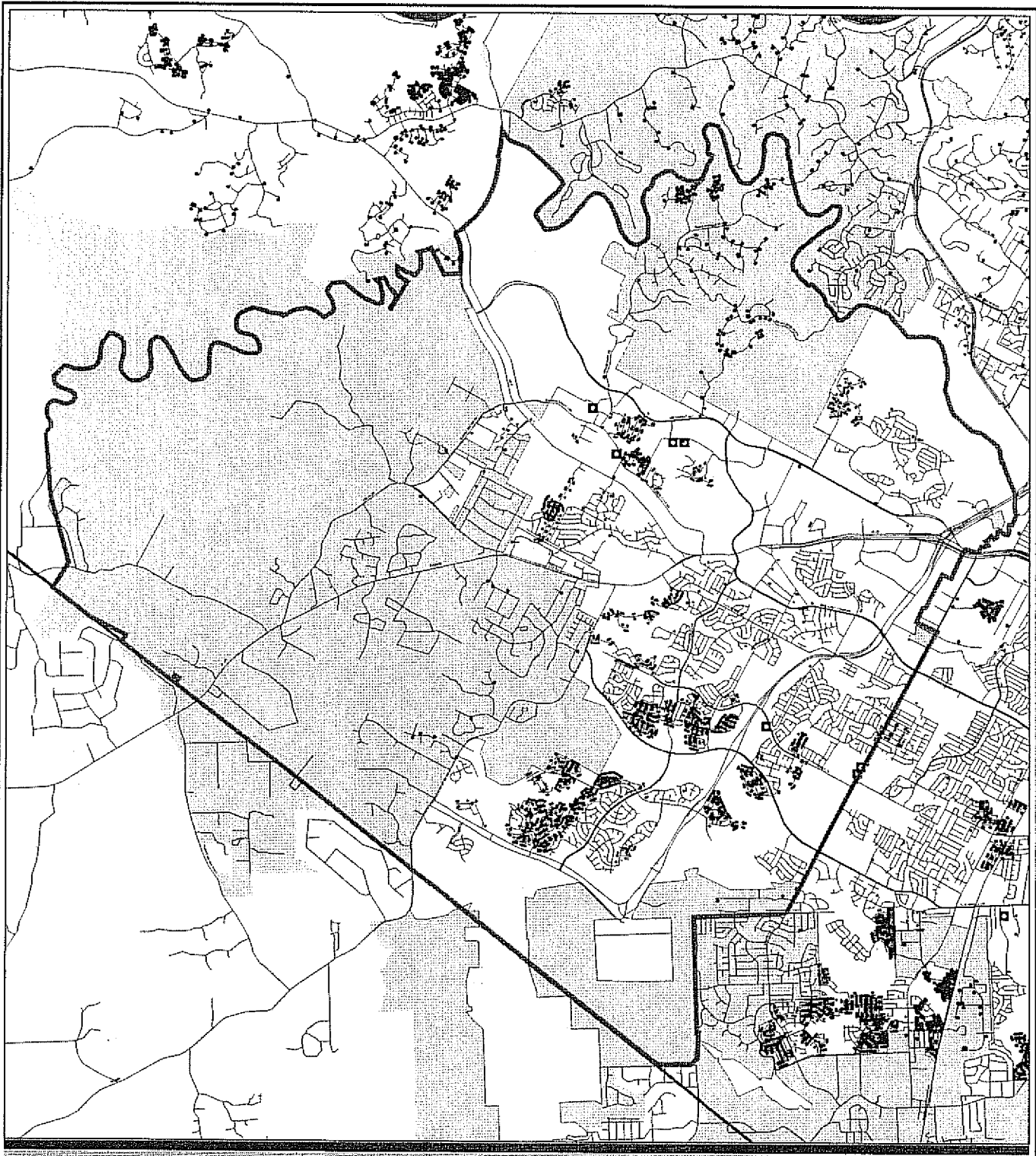
Leffingwell Ordinance Advantages

Redevelop with Leffingwell ordinance compared to greenfield development
Largest 20 properties (> 7.5 acres)

404 acres clustered redeveloped

		Impervious Cover 65%	% of sprawl impervious cover
units / acre VMU	living units		
8	3232	263 acres $\div 808 =$	33%
15	6060	263 acres $\div 1515 =$	17%
		Impervious Cover 25%	
sprawl development	living units		
	3232	808 acres	
	6060	1515 acres	









CLUSTERED DEVELOPMENT PRESERVES OPEN SPACE: IMPERVIOUS COVER NOT CREATED		
Not Developed	Open Space	Imp. Cover
3232 - 404 =	2828 acres	2828 x 25% = 707 acres
6060 - 404 =	5656 acres	5656 x 25% = 1414 acres
NO SAVINGS		NO SAVINGS
NO SAVINGS		NO SAVINGS



Oak Hill Study Area Housing Starts

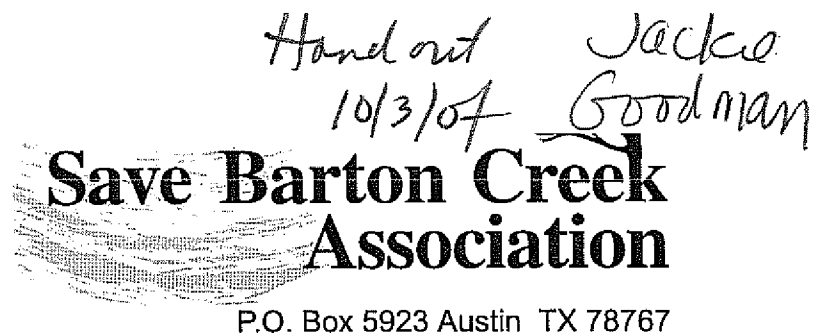
January 1, 2000 through April 1, 2005

Permits Issued by The City of Austin, Texas

-  City of Austin Full Purpose Jurisdiction
-  City of Austin Limited Jurisdiction
-  City of Austin Extraterritorial Jurisdiction
-  Single Family Housing Start
-  Duplex, Tri- or Four-Plex
-  Multifamily Housing Unit Start
-  R1-2 Permit: Utility Hook-up Outside City
-  Demolition or House Moved Off Lot



10/03/07



Re. "An ordinance amending the City Code to add a new section 25-8-27 relating to redevelopment in the Barton Springs Zone"

The Save Barton Creek Association cannot support the proposed amendment to the Land Development Code ["SOS"] water quality ordinance proposal as currently written. We offer, together with others in the environmental community, the following resolution for identified gaps, clarifications, and concerns that the code amendment language and provisions raised.

Part 1(B) — specifically eschewing a "super majority" Council vote on beneficial retrofit of proposed water quality controls for existing development built without requirement for such controls. The considered recommendation is to delete 1(B)

Explanation: Some question the necessity of this exemption to approve beneficial redevelopment/water quality retrofit and/or mitigation project proposals. Noting and understanding the perception of practical impacts which the requirement for a supermajority Council vote (variances to 'SOS') generate: our recommendations to improve process and provisions still require only certain redevelopment applications for City Council action to approve. The supermajority vote would remain an assurance, in conjunction with other recommendations to the ordinance language, that such decisions will be made in the context of environmental benefit, protection and preservation, and no other.

Part 1(D)(3) clarification and possible expansion of the intent to improve and correct erosion and flooding mitigation during construction. Recommend the following interim additions until further regulation is crafted to resolve existing negative impacts during construction:

- (1) Place temporary erosion basins off-line (not located in natural draws/channels) unless designed as a dam.
- (2) Require site plan to phase clearing and grading with temporary stabilization, and no provision for solely administrative waivers.
- (3) Require spoils to be hauled off-site or stored away from concentrated flow.
- (4) Require more robust and effective perimeter controls (filter fabric-encased gabions) superior to silt fencing.
- (5) Require construction-phase bond to be posted to ensure funding for cleanup in case of failure. (an independent third party could be considered for that cleanup)
- (6) Expectation understood to be the same engineering design rigor for temporary erosion and sedimentation controls as for permanent structural controls.

— City enforcement and fines for control failures be increased appropriately

— absence of a provision for guarantee of continued design performance through maintenance, repair, redesign (through performance bond/insurance concept with the City as part of the approval ; and/or City commitment to do so) See also recommendation for Part 3.

Part 1(D)(6) (ref. to concept) performance bond/insurance/fiscal posting which guarantee maintenance, repair, redesign relative to permanent erosion, sedimentation/filtration controls in case of failure.

— in light of the provision for mitigation to offset development and calculate lower impervious cover percentage, reference to a more clearly detailed formula for calculation and location of such mitigation (land) as deemed adequately beneficial to water quality and mitigating existing pollution/pollutant load would seem necessary here. Additional reference needed on mitigation requirements for impervious cover but not necessarily increased density.

Part 1(E) Council approval) add 1(E)(4) will increase building square footage by more than 10%.

— implied not precisely identifiable is language requiring the same qualifiers in administrative approval as listed in the three circumstances requiring Council approval, and the four factors to be considered.

— Criteria defined through findings of fact for Administrative and/or Council approval.

Part 1(H) (reference to) Environmental Board review for stakeholder consensus process for technical manual and/or rules upgrades in [assumed 'state of the art'] best management practices in (COA) water quality control mitigation regulation.

— Mitigation fees Part 3

a suggested formula has been put forward for consideration:

120% of the water quality land acquisition index price updated annually, with the base 100% used for water quality protection land acquisition; 20% to enforce water quality controls within the City's jurisdiction in the Barton Springs Zone.

Explanation: *Water quality land index price is currently estimated at \$15,000 per acre, making 120% equal to \$18,000 per acre. \$15,000 available for mitigation land acquisition, \$3,000 for water quality control correction.*

Thank you for your service, and your consideration of these issues.

Jackie Goodman, President
Save Barton Creek Association



ENVIRONMENTAL BOARD MOTION EB100307-D1

Date: October 3, 2007

Subject: Barton Springs Redevelopment Ordinance

Motioned By: Dave Anderson, PE, CFM Seconded By: Phil Moncada

Motion: The Environmental Board recommends Conditional Approval of the Proposed Redevelopment ordinance in the Barton Springs Zone with the following conditions:

Conditions:

1. Review the necessity of having a super-majority approval for those redevelopment projects that exceed the thresholds requiring City Council approval listed in Section 25-8-27 (E) of the proposed Ordinance.
2. The proposed Ordinance should include a threshold for secondary impacts due to major redevelopment projects, but that further discussions to define the appropriate threshold should occur prior to hearings by City Council.

Commentary: There is agreement between many parties that a threshold applies above which some projects should rightfully be reviewed by a larger public audience. It is also evident that the question of secondary impacts due to major redevelopment projects is recognized as an issue for most parties. However, there is a current lack of agreement on how the threshold level for secondary impacts has been defined (i.e., is it straight acreage, vehicle trips per day, building square footage, or some combination thereof?). This is especially important if a super-majority is required for approval of those projects that lie above the threshold.

3. Staff needs additional investigation of multifamily redevelopment sites and the impact of the proposed Ordinance on these sites as they are redeveloped in the future.

Commentary: There are many multifamily sites that lie within the Barton Springs Zone and could be considered sites for redevelopment in the future. These sites, however, have been largely left out of the discussion to date due to their recent construction dates.

4. Staff should investigate the ideas of credits for removal of septic systems in environmentally sensitive redevelopment areas.
5. Require all redevelopment sites outside of the City Limits to go before City Council due to the lack of zoning control in these areas.
6. Update criteria for construction phase pollution controls (i.e., Environmental Criteria Manual) for development in the Barton Springs Recharge and Contributing Zones, including adding a requirement for phasing construction activity and paying special attention to moving structural controls off-channel and designing ponds to handle more than the 2-year storm event.
7. Evaluate the existing Fiscal Assurity program requiring that a Contractor post fiscal prior to Site Plan approval, and investigate the opportunity to use this posted fiscal for immediate, off-site cleanup of damage if the erosion controls fail.
8. Dedicate an Environmental Inspector to review redevelopment sites in the Barton Springs Zones, such that the frequency of inspection is no less than weekly, and is concurrent with precipitation events.

Rationale

1. This Ordinance is designed to meet the spirit and function of the SOS Ordinance – which is a balance of structural controls with low overall impervious cover.
2. This Ordinance requires the purchase of mitigation land on which there will be no further development. This reduces future loading from the site, and also keeps the overall impervious cover of the watershed as low as possible.
3. The structural controls that will be put in place in areas that currently do not have them reduce a wide variety of pollutants (nutrients such as phosphorus and nitrogen, hydrocarbons, metals, and pesticides) that will improve current water quality rather than just prevent further degradation.
4. The redevelopment spurred by this Ordinance may reduce vehicle trips by providing more current services to local residents, who would otherwise have to drive further to local communities to access equivalent services.
5. The characteristics of candidate sites yield reduced redevelopment construction impacts due to the sites being already graded and cleared, only 2% of the 199 candidate sites have slopes greater than 15%, and that 86% of the sites are less than 5 acres.
6. The Ordinance promotes disturbing a currently developed site before undeveloped, greenfield sites.
7. Channel erosion is a major source of sediment in Barton Springs and Barton Creek, and since much of the existing impervious cover is not treated by structural water quality

controls, this Ordinance and the resulting redevelopment will actually REDUCE in-stream erosion by providing hydrologic control with structural controls.

Vote **6-0-0-1**

For: Anderson, Maxwell, Moncada, Neely, Beall, and Dupnik

Against: None

Abstain: None

Absent: Ahart

Approved By:

David J. Anderson, PE, CFM
Chairman

DRAFT

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SUPPLEMENTAL WATER SUPPLY AGREEMENT

This 2007 Supplemental Water Supply Agreement (“SWSA”) is made and entered into by and between the City of Austin (“Austin”) and the Lower Colorado River Authority (“LCRA”) (collectively, “Parties”).

1. RECITALS

- (a) As a conservation and reclamation district created under Section 59, Article XVI of the Texas Constitution, LCRA is charged with the control, storing, preservation, and distribution of the waters of the Colorado River and its tributaries within its boundaries for any useful purpose, and may use, distribute and sell such water for any such purpose, as authorized by state law. LCRA currently uses water rights it holds to store, divert and use water from the Colorado River to meet the water needs of its customers. These rights total more than 2.1 million AFY and authorize use for multiple Beneficial Uses in various locations on a firm and interruptible basis throughout the LCRA service area, including some locations outside the Colorado River Basin.
- (b) Austin and the LCRA have entered into various contracts and agreements related to water supply and water management, including but not limited to the agreements dated February 5, 1938, December 15, 1966, December 10, 1987, September 17, 1998, as amended February 3, 2000, and October 7, 1999 (the “1999 Agreement”) and January 1, 2000, as amended on November 17, 2004 (“FPP/SHEC Agreement”), (collectively, the “Existing Water Sale Agreements”). The 1999 Agreement is intended to provide up to 325,000 AFY from a combination of Austin’s and LCRA’s water rights for Austin’s municipal water supply needs and other Beneficial Uses, and additional supplies for steam electric purposes at Lady Bird Lake (previously known as “Town Lake”) and Decker Lake.
- (c) Austin holds significant run-of-river water rights to divert and use water from the Colorado River for municipal and steam electric purposes. The Austin Water Utility (AWU) currently serves a population of approximately 830,000 people and associated businesses and in recent years has diverted from the Colorado River approximately 165,000 AFY to meet the water demands of this population. In addition, Austin Energy (AE) currently owns all or part of five power plants that rely in whole or in part on water drawn from the Colorado River for steam electric purposes, in amounts up to 40,000 AFY. Austin also uses water for recreation purposes at Lady Bird Lake and for purposes of irrigating certain city-owned recreational facilities.
- (d) Austin and Central Texas continue to experience rapid population growth and development, therefore the Parties anticipate that Austin’s Municipal Water Demands and demand for water to meet other needs will continue to increase in the coming decades. Austin estimates that, by about 2050, it will need more water than it will

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have available from the Existing Water Sale Agreements and Austin's Existing Water Rights.

- (e) LCRA is developing a water supply resource plan that will help it manage and plan for the long-term water supply needs of its customers.
- (f) On June 18, 2007, the Parties entered into a Settlement Agreement Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality ("2007 Settlement Agreement"). In addition to establishing a process for resolving a number of pending regulatory matters, the 2007 Settlement Agreement also established a formal water resource management partnership ("Water Partnership") to collaboratively manage water supplies and evaluate and implement strategies designed to optimize water supplies to meet water needs of the Parties, their customers, and the environment. Significantly, the 2007 Settlement Agreement is contingent on the execution of this SWSA. Once executed, the Parties may proceed to implement the remaining terms of the 2007 Settlement Agreement.
- (g) The Parties have executed this SWSA as part of the 2007 Settlement Agreement. Although this SWSA and the 2007 Settlement Agreement are two separate documents, this SWSA results from the same set of negotiations as the 2007 Settlement Agreement and the consideration provided by each Party under both agreements is intended to be applicable to and considered under both agreements.
- (h) The Parties recognize that planning for and providing the Supplemental Water as contemplated by this SWSA requires a concerted and collaborative effort of the Water Partnership and will likely require engineering, water availability, permitting and other studies to be performed. The Parties further recognize that, because of the very long-term nature of this effort, many unknowns may affect the decisions that must be made in the future regarding implementation of this SWSA. These unknowns may affect how the Parties decide to fund the studies and other expenses associated with the commitments made by the Parties under this SWSA. Accordingly, the Parties have by this SWSA established a framework that provides guidance and structure for the Parties yet allows the Parties to remain flexible in their decisionmaking and implementation so that unforeseen circumstances or changed conditions may be appropriately accommodated over time in a manner that is fair and reasonable to both Parties.

2. DEFINITIONS

- (a) **Acre-Foot:** The volume of water necessary to cover one acre of surface area to a depth of one foot, which is approximately 325,851 U.S. gallons.
- (b) **AE:** the City's of Austin's electric utility, known as Austin Energy.

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- (c) **AFY:** Acre-feet per year or acre-foot per year.
- (d) **Austin:** The City of Austin and all of its affiliates, departments, or divisions thereof, and all of its respective representatives, successors, and assigns.
- (e) **Austin's Existing Water Rights:** The water rights to the Colorado River held by Austin as of the Effective Date of this SWSA, which total approximately 330,000 acre-feet of water per year (AFY) and include Certificates of Adjudication (CA) Nos. 14-5471, as amended, and 14-5489, as amended.
- (f) **Austin's Service Area:** Encompasses: 1) the area within the Impact Fee Service Area Boundary as amended from time to time by the Austin City Council; and 2) the area within the City of Austin Extraterritorial Jurisdiction and Municipal Boundaries as amended from time to time; and 3) all retail and wholesale service areas in which service is provided by the Austin Water Utility within Travis County or any County contiguous to Travis County; and 4) other facilities such as power plants, that are owned in whole or in part by the City of Austin and for which Austin is providing only its share of the water required for the facility wherever located within the Colorado River Basin.
- (g) **Austin's Municipal Water Demands:** A specific quantity of water reasonably expected to be needed by Austin within Austin's Service Area for its own municipal purposes over a specified period of time, after implementing Conservation.
- (h) **AWU:** Austin's Water and Wastewater Utility.
- (i) **Beneficial Use:** Use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose, and shall include water provided for instream flows or freshwater inflows to the bays and estuaries.
- (j) **Conservation:** Those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water so that a water supply is made available for future or alternative uses. For purposes of this SWSA, the term "Conservation" does not, however, include Direct Reuse or Indirect Reuse.
- (k) **Conveyance, Delivery or System Loss:** That amount of additional water needed to transport water downstream using the bed and banks of a stream or watercourse, through a canal system or other similar conveyance system to meet the requested or ordered amount of water at the Delivery Point(s) under the contract; or that amount of water that is reasonably expected to be lost due to evaporation, transpiration, recharge, seepage, leakage or other similar losses in the transportation of the water from the source of supply to the Delivery Point(s) under the contract.

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- (l) **Demand Projection:** The projected schedule of Austin's Municipal Water Demands, its other water needs, and estimated Conservation and Reuse, to be developed in accordance with Section 3.3.2.1 of this SWSA.
- (m) **Dispute or Controversy:** As defined in Section 4.7.1.
- (n) **Direct Reuse:** The Beneficial Use of: (a) municipal wastewater or industrial wastewater or process water that is under the direct control of a treatment plant owner or operator or industrial facility; or (b) agricultural tailwater, before such wastewater, process water or agricultural tailwater is either disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- (o) **Diversion Point(s):** The point or points from which Austin diverts, pumps, or otherwise withdraws Supplemental Water from a reservoir, watercourse, stream or other water source, to be specified in accordance with Section 3.5 of this SWSA.
- (p) **Delivery Point(s):** The point or points where Austin accepts delivery of the water from LCRA as specified in Section 3.5 of this SWSA.
- (q) **Effective Date:** As specified in Section 4.26 of this SWSA.
- (r) **Existing Water Sale Agreements:** Collective name for those previously established contracts and agreements entered into by the Parties and relating to water supply and management, as identified in Section 1(b) of the recitals of this SWSA.
- (s) **Firm Water Supply:** A supply of water that could be provided during a repetition of the most severe historical drought for the lower Colorado River or other source of supply or combination of sources of supply from which water is available to Austin, as may be specified in the LCRA Water Management Plan, or other written determination by Texas Commission on Environmental Quality (TCEQ), the Texas Water Development Board, or applicable groundwater conservation district permit, water management plan and/or rules and regulations.
- (t) **FPP/SHWC Agreement:** The water sale contract between the City of Austin and LCRA dated February 3, 2000, and amended November 17, 2004, wherein Austin has purchased from LCRA a Firm Water Supply to use for steam electric purposes at the Fayette Power Project (FPP) and Sand Hill Energy Center (SHWC).
- (u) **Indirect Reuse:** The diversion of water from a watercourse, lake, or other body of state water, for Beneficial Use, including diversion into storage facilities, of a quantity of water that can be attributed to a specific quantity of Return Flows originating upstream of the Diversion Point.
- (v) **Interruptible Indirect Reuse:** Indirect Reuse by Austin, as allowed by the 2007 Settlement Agreement and this SWSA.

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- (w) **LCRA:** The Lower Colorado River Authority and all of its affiliates, departments, or divisions thereof, and all of its respective representatives, successors, and assigns.
- (x) **LCRA's Existing Water Rights:** The water rights to the Colorado River held by LCRA as of the Effective Date of this SWSA, which total more than 2.1 million AFY and include the right to divert and use up to 1.5 million AFY from lakes Buchanan and Travis (CA Nos. 14-5478 & 14-5482), and another 636,750 AFY under downstream run-of-river water rights associated with the Gulf Coast (CA No. 14-5476, as amended), Lakeside (CA No. 14-5475, as amended), Garwood (CA No. 14-5434, as amended), and Pierce Ranch (CA No. 14-5477, as amended) operations, as well as several smaller water rights for Lakes Marble Falls, LBJ (including Ferguson Power Plant), and Inks (CA Nos. 14-5479, 14-5480, & 14-5481), the Lometa Reservoir (Permit No. 5715), interbasin transfer of water to the City of Leander (Permit No. 5677), and for its downstream power plant operations (CA Nos. 14-5474 & 14-5473).
- (y) **LCRA's Raw Water System:** All untreated water supplies owned and controlled by LCRA that are not specifically dedicated for use solely by one or more specific LCRA customer(s), and which may, at LCRA's sole discretion, include all or portions of any New LCRA Water Supply at any point in time after a New LCRA Water Supply is acquired or developed to the extent that such New LCRA Water Supply is not specifically dedicated for use solely by one or more specific LCRA customer(s).
- (z) **New Austin Water Supply:** a water supply to be acquired or developed by Austin, at its sole discretion, after the Effective Date of this SWSA and for which Austin has independently pursued and paid for all costs of acquisition, development, study, permitting, management, operation, and use of such supply, but does not include a supply obtained through an amendment to Austin's Existing Water Rights or any supply owned by LCRA. A New Austin Water Supply includes the Return Flows derived from such supply.
- (aa) **New LCRA Water Supply:** a water supply to be acquired or developed by LCRA, at its sole discretion, after the Effective Date of this SWSA, including any infrastructure required to increase the availability of Water Supply available from LCRA's Existing Water Rights as they may be amended in the future, and for which required LCRA Board approvals, if any, have already been received.
- (bb) **Potential LCRA Water Supply:** a water supply that LCRA may, at its sole discretion, acquire or develop after the Effective Date of this SWSA, including any infrastructure required to increase the availability of Firm Water Supply available from LCRA's Existing Water Rights as they may be amended in the future, and for which required LCRA Board approvals, if any, have not yet been received. Upon receipt of all required LCRA Board approvals, a Potential LCRA Water Supply shall then be a New LCRA Water Supply.

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- (cc) **Parties:** Austin and the LCRA.
- (dd) **Return Flows:** Municipal wastewater or industrial wastewater or process water, or agricultural tailwater, that has been disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- (ee) **2007 Settlement Agreement:** The agreement between the Parties dated June 18, 2007, and entitled "Settlement Agreement by and between the City of Austin and the Lower Colorado River Authority Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality."
- (ff) **Supplemental Water:** The water to be supplied by LCRA under this Agreement.
- (gg) **Supplemental Water Supply Agreement or SWSA:** This agreement.
- (hh) **Supply Decision:** The decision regarding the source(s) of supply to be used to satisfy a particular Supply Increment, as recommended by the Water Partnership under Section 3.4.1 of this SWSA and confirmed by written agreement as required by Section 3.4.4.
- (ii) **Supply Increment:** A volume of water equal to part or all of the Supplemental Water to be provided under this SWSA, and the projected timing of use and intended use(s) thereof, as determined by the Water Partnership under Section 3.3.2.2.
- (jj) **Water Management Plan:** A plan required in specific water rights held by LCRA and approved by the TCEQ that defines LCRA's reservoir operations, water management program and policies under those water rights.
- (kk) **Water Partnership:** The collaborative relationship between the LCRA and Austin created by Section IV.A of the 2007 Settlement Agreement.
- (ll) **1999 Agreement:** An agreement between the Parties dated October 7, 1999, and entitled "First Amendment to December 10, 1987 Comprehensive Water Settlement Agreement Between City of Austin and Lower Colorado River Authority."

3. CONTRACT TERMS

3.1. QUANTITY OF WATER

Subject to the terms and conditions contained in this SWSA, LCRA agrees to provide to Austin, and Austin agrees to purchase from LCRA, a quantity of firm Supplemental Water sufficient to meet Austin's Municipal Water Demands through December 31, 2100, such quantity not to exceed 250,000AFY. Notwithstanding the foregoing, LCRA's obligation to provide Supplemental Water under this SWSA shall be reduced by a volume equal to the volume of any New Austin Water Supply obtained by Austin at any

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time during the term of this SWSA. Further, the Parties understand and acknowledge that the Supplemental Water LCRA is obligated to provide under this SWSA may not be sufficient to meet all of Austin's Municipal Water Demands and other water needs through December 31, 2100, and that Austin's Demand Projection provided under Section 3.3.2.1 of this SWSA represents Austin's best estimate of its water supply needs at the time it is provided and does not and is not intended to bind Austin to implement or adopt any particular policies concerning Conservation, Reuse, or water supply development and that Austin's Demand Projection may change due to changes in policy, future needs for additional water for steam electric purposes, or other factors such as the rate of population growth, and Austin's implementation of Water Conservation and Reuse.

3.2. PURPOSE OF USE

The water supplied under this SWSA is intended to address municipal water needs of Austin through December 31, 2100 that exceed the amounts available under the Existing Water Sale Agreements or from New Austin Water Supplies. Austin represents to LCRA and LCRA relies on such representation that all water made available under this SWSA will be used by Austin to meet Austin's Municipal Water Demand. Further, the Supplemental Water under this SWSA may be used for steam electric and other power plant purposes, but only after first being considered by the Water Partnership consistent with Section VI of the 2007 Settlement Agreement.

3.3. TIMING OF USE

3.3.1. Relationship to 1999 Agreement

Unless by separate written agreement of the Parties, Austin may not use any Supplemental Water to be made available under the SWSA until its firm water demands exceed the amounts of water available for Austin's use under the Existing Water Sale Agreements. Nothing in this SWSA, however, is intended to prevent Austin from obtaining a New Austin Water Supply at any time.

3.3.2. Demand Schedule – Demand Projection and Supply Increment.

3.3.2.1. Demand Projection

- a. On or before December 31, 2010, Austin shall develop and submit to the Water Partnership a Demand Projection, to be updated every five years thereafter or on such other schedule as the Water Partnership may determine and that coincides with the water demand estimates developed as part of the State Water Plan and associated regional water planning process. The Demand Projection shall specify:

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- (i) Austin's Municipal Water Demands through December 31, 2100, by decade and estimated location of use;
 - (ii) Austin's estimated water needs through December 31, 2100, for industrial (including steam electric), irrigation/agricultural, and recreation purposes, by decade and estimated location of use;
 - (iii) Austin's estimate of Conservation to be implemented by decade through December 31, 2100; and
 - (iv) Austin's estimate of the location, timing, and magnitude of any Direct Reuse or Interruptible Indirect Reuse project(s) that Austin plans to implement.
- b. For purposes of this SWSA, Austin shall consider estimates of projected water demand developed for the State Water Plan, but may provide a Demand Projection that differs from such estimates. To the extent that the Demand Projection differs from the estimates developed for the State Water Plan, Austin shall provide documentation supporting its Demand Projection, and shall seek conforming modifications to the State Water Plan as may be necessary or convenient for purposes of permitting or funding of the Supplemental Water Supply to be provided under this SWSA.
 - c. Prior to development of the Demand Projection required by subsection (a) above, Austin agrees that it will cooperate with LCRA's efforts to develop its water supply resource plan referred to in Section 1(e) above by providing LCRA with preliminary information related to the components set forth in subsection (a) of this Section 3.3.2.1.

3.3.2.2. Timing of Supply Increment Determination

No later than June 1 in the year after Austin's Municipal Water Demand for the preceding year exceeded 225,000 AFY, and upon receipt of each updated Demand Projection received thereafter, the Water Partnership shall, within twelve months, determine:

- a. whether to initiate a process to decide a Supply Increment, and
- b. if the process is initiated, the quantity of water, timing, and purpose(s) of use of the Supply Increment.

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3.3.2.3. Acceleration of Supply Increment Decision Process

Notwithstanding Section 3.3.2.2 above, the Water Partnership may determine a Supply Increment at any time they deem necessary, in light of the water supply conditions that exist at that time, including any opportunities to partner with other LCRA customers that may arise related to a Potential LCRA Water Supply, as identified in the notice to be provided by LCRA under Section 3.10.2 of this SWSA (“Required Notices”).

3.4. SUPPLY DECISION AND SOURCE OF SUPPLY

LCRA’s obligation to reserve, acquire, develop, and make available Supplemental Water under this SWSA, if any, and Austin’s obligation to pay for Supplemental Water will be triggered by the Supply Decision as set forth in this section.

3.4.1. Supply Decision

Upon a determination of the quantity, timing, and purpose(s) of use for each Supply Increment, and subject to the limitations on the source of supply as set forth under Section 3.4.2, the Water Partnership shall consider the possible source(s) of supply identified under Section 3.4.2 and make a recommendation to and seek appropriate authorizations from the Parties’ appropriate governing body regarding which source(s) of supply should be used to fulfill the Supply Increment in accordance with this section.

- 3.4.1.1. If all or part of the water to satisfy the Supply Increment is legally and physically available to LCRA from LCRA’s Raw Water System and not otherwise allocated for use by another LCRA customer, then the Water Partnership shall recommend that such supply be selected and reserved by LCRA in accordance with Section 3.4.4 below.
- 3.4.1.2. If all or part of the water needed to satisfy the Supply Increment is not legally and physically available to LCRA, then the Water Partnership will make a recommendation regarding the source or combination of sources of supply that would best satisfy Austin’s Municipal Water Demand for the particular Supply Increment using the following criteria:
 - a. The decisionmaking guidelines, including the Parties’ mutual interests, as identified in Sections 5.C and 6 of Exhibit A of the 2007 Settlement Agreement;
 - b. The magnitude of the Supply Increment and timing under which Austin will use such Supply Increment;
 - c. The timing and magnitude of the cost necessary to ensure that the water supply needed for a Supply Increment will be legally and

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physically available for Austin's use, including but not limited to any studies, permitting, design, acquisition, construction, and infrastructure costs;

- d. Timing and cost required to acquire regulatory approvals;
- e. The existence of other water supply projects or water supply needs for any third party that may provide an opportunity for partnering or cost-sharing with those third parties, including but not limited to any opportunities related to a Potential LCRA Water Supply;
- f. The status of any water supply contract(s) between LCRA and any third parties;
- g. The impacts, if any, to other LCRA customers;
- h. The quality of the water supply and costs related to integrating the supply into Austin's system; and
- i. Any other factors the Water Partnership deems necessary and appropriate.

3.4.2. Possible Sources of Supply

The Supplemental Water to be provided by LCRA may only include a source of water that will be legally and physically available to LCRA on and after the date when Austin's actual use of the water is expected to occur, and is limited to:

- 3.4.2.1. water available, if any, under Austin's Existing Water Rights (including such rights as they may be amended in the future) consistent with the 1999 Agreement, as clarified by Section VII.B of the Settlement Agreement,
- 3.4.2.2. water legally and physically available from the LCRA Raw Water System that is not otherwise allocated for use by another LCRA customer,
- 3.4.2.3. any Return Flows derived from any water supplies made available to Austin under this SWSA that are determined to be available for Interruptible Indirect Reuse in accordance with Section 3.8 of this SWSA, or
- 3.4.2.4. A New LCRA Water Supply not specifically dedicated for the sole use of one or more of LCRA's other customers or otherwise limited in its use by LCRA Board Policy, or local, state, or federal law and

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3.4.6. Relationship to New Austin Water Supply

Nothing in this Section 3.4 shall prevent Austin from using a New Austin Water Supply to fulfill all or part of the Austin Municipal Water Demand at any time. Once a Supply Decision to use Supplemental Water becomes effective, however, Austin may not replace any portion of that Supplemental Water with a New Austin Water Supply unless the Parties otherwise mutually agree.

3.5. DIVERSION POINT OR DELIVERY POINT

3.5.1. General

Austin may designate any reasonable Diversion Point(s) within Austin's Service Area, except as limited by this Section 3.5.2. Austin shall identify the Diversion Point(s) or Delivery Point(s), with such points to be identified coincident with the Water Partnership's identification of the particular Supply Increment (or portion thereof) from which such diversion or delivery will be made and the location within the Austin's Service Area where the water will be used. For Supplemental Water to be made available for diversion from the Colorado River or its tributaries, the Diversion Point(s) shall be deemed to be the Delivery Point(s) unless otherwise agreed to by the Parties.

3.5.2. Location Dependent Limitations

If the water to be made available under this SWSA is legally and physically available for diversion from Lake Travis, Lake Austin, Lady Bird Lake, or such other Diversion Point(s) along the Colorado River from Longhorn Dam downstream to the Travis/Bastrop County Line, Austin agrees:

- 3.5.2.1. the diversion rate from Lake Travis shall not exceed 300 MGD, unless the Water Partnership recommends a higher diversion rate as part of its Supply Decision;
- 3.5.2.2. any diversion must comply with any instream flow requirements set forth in the water rights under which such diversions are made; and
- 3.5.2.3. if the Diversion Point(s) will be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new Diversion Point(s) to the Water Partnership and the Water Partnership will develop a mutually agreeable approach to address the following considerations:
 - a. Water quality concerns;
 - b. Streamflow conditions;

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- c. Accounting for the source of water for the proposed location; and
- d. Any other accounting or environmental issues the Water Partnership deems appropriate.

3.5.3. Intake Elevations

Austin acknowledges and agrees that LCRA's obligations under this SWSA shall not require LCRA to make additional releases of water from LCRA's Raw Water System to raise the water elevations or flows at the Diversion Point(s) at a particular time sufficient for Austin's intake and/or diversion facilities to operate.

3.6. CONVEYANCE, DELIVERY OR SYSTEM LOSS

- (a) For all diversions of Supplemental Water from the Colorado River located below Longhorn Dam, Austin shall bear all Conveyance, Delivery or System Losses incurred in the transport of the water from Longhorn Dam to Austin's Diversion Point(s).
- (b) For all diversions of Supplemental Water upstream of Longhorn Dam, LCRA shall bear all Conveyance, Delivery or System Losses that cannot be allocated under Austin's Existing Water Rights.
- (c) For any Supplemental Water for which the Delivery Point is not located on the Colorado River, Austin shall bear all Conveyance, Delivery or System Losses.
- (d) The Water Partnership shall develop a mutually agreeable means for determining the amount of Conveyance, Delivery or System Losses attributable to Austin's water use under this SWSA and the LCRA shall include such calculation in its invoices to Austin.

3.7. AMOUNT AND TIMING OF PAYMENT

Austin shall pay all reasonable and necessary costs associated with Supplemental Water as set forth below. Further, Austin's obligations to pay shall continue upon Termination as may be set forth in any written agreement regarding a Supply Decision as contemplated by Sections 3.4.4 and 4.4.1 of this SWSA.

3.7.1. Supplemental Water from LCRA's Raw Water System

- 3.7.1.1. For Supply Increments (or portions thereof) to be provided from LCRA's Raw Water System, Austin's payments shall commence when the Supply Decision becomes effective as set forth under Section 3.4.4 and LCRA's reservation of such water for Austin's use.

- 3.7.1.2. Austin shall pay LCRA's then current and Board-approved rates,

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charges, and fees applicable to Firm Water Supply for any Supply Increment (or portion thereof) to be made available from LCRA's Raw Water System, after accounting for Conveyance, Delivery or System Losses, credits for Interruptible Indirect Reuse as set forth in Section 3.8 of this SWSA, and any reductions in reservation fees as may be determined appropriate based on the recommendation of the Water Partnership, as set forth herein:

For a particular Supply Increment (or portion thereof) to be provided from the LCRA Raw Water System, the Water Partnership shall include as part of its Supply Decision a recommendation regarding an appropriate reduction, if any, in the amount of reservation fees to be paid for the Supplemental Water. The Water Partnership shall base its recommendation, if any, on the following factors:

- a. implementation by Austin of Interruptible Indirect Reuse under the 1999 Agreement that could allow some portion of the reservation fees paid by Austin under the 1999 Agreement to be applied towards reservation of some portion of Supplemental Water from the LCRA's Raw Water System;
- b. implementation of a system operation of LCRA's and Austin's Existing Water Rights together, as they may be amended in the future, that may be recommended by the Water Partnership, and which increases the amount of Firm Water legally and physically available for diversion and use of water from the Colorado River, which increase is confirmed by TCEQ or other applicable regulatory authority;
- c. the status of LCRA's water sale contracts with existing customers at the time the Supply Decision is to be made; and
- d. any other factor the Water Partnership deems appropriate. In any event, the Water Partnership may not recommend any reduction in reservation fees under this subsection if it would result in an adverse impact on the firm water rates to be paid by LCRA's other customers.

3.7.2. Other Sources of Supplemental Water

In the event that the Supplemental Water for a particular Supply Increment (or portion thereof) will not be provided from the LCRA Raw Water System but will instead be provided from all or a portion of a Potential LCRA Water Supply or New LCRA Water Supply to be set aside and dedicated specifically for Austin's sole use, then Austin shall pay LCRA an amount necessary to cover its share of costs associated with the

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acquisition, development, study, design, construction, permitting, management, operation (including diversion, storage, and conveyance), maintenance, and use of the source of supply that will be used to satisfy the Supply Increment (or portion thereof). The schedule, manner of cost recovery, and the Parties' respective ownership interests shall be determined by the Water Partnership and shall be established prior to initiation of any action by LCRA that is required to develop the Supply Increment or that requires LCRA to incur any such costs. Such determination shall be included in the Supply Decision recommended for implementation to the Parties' respective governing bodies.

3.7.3. New Austin Water Supply

If a New Austin Water Supply is incorporated into a system operation along with LCRA's water rights and Austin's Existing Water Rights, then the Water Partnership will determine whether such incorporation imposes additional expenses on LCRA that are uniquely attributable to Austin's use of the New Austin Water Supply. If the Water Partnership determines that such additional expenses will be incurred, it will also determine a schedule and manner by which Austin will pay such costs.

3.8. INTERRUPTIBLE INDIRECT REUSE

In calendar years when Austin accumulates a monetary credit through Interruptible Indirect Reuse that results in a total credit amount equal to the annual payment value for water deliveries under the Existing Water Sale Agreements pursuant to Section IV(B)(4)(a) of the 2007 Settlement Agreement, Austin may receive a credit under this SWSA for any additional volumes of Interruptible Indirect Reuse in that calendar year as set forth in this section.

3.8.1. Colorado River Sources

3.8.1.1. Implementation

Where the Supplemental Water provided by LCRA under this SWSA originates from the Colorado River, implementation of Interruptible Indirect Reuse of Return Flows shall be governed by Sections V.A(1), V.B(1), and V.B(2) of the 2007 Settlement Agreement.

3.8.1.2. Credit Against Payments

Upon implementation of Interruptible Indirect Reuse under this section 3.8.1, LCRA agrees to provide Austin with a monetary credit on a per acre-foot basis at a one-to-one ratio, such that for each acre-foot of water diverted for Interruptible Indirect Reuse, LCRA shall provide a credit equivalent to the per-acre foot rate being paid by Austin for any Supply Increment(s) provided from LCRA's Raw Water System.

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3.8.2. Other Sources

Implementation of Interruptible Indirect Reuse of Return Flows originating from Supplemental Water provided by LCRA under this SWSA that is not from the Colorado River shall be subject to Section V.A(1) of the 2007 Settlement Agreement. Further, the method for implementing and accounting for such Interruptible Indirect Reuse, including the appropriate environmental flow criteria and credit against payments to be provided, shall be developed by the Water Partnership prior to Austin initiating any such Interruptible Indirect Reuse of such Return Flows and shall give due consideration to:

- a. the source of supply;
- b. the environmental flow criteria in Exhibit B of the Settlement Agreement, as such criteria may be amended by the Water Partnership;
- c. any restrictions that may be imposed by local, state, or federal law in effect at the time the water is made available that may affect the overall availability of such Return Flows for Interruptible Indirect Reuse; and,
- d. for projects to be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant):
 - (i) Water quality concerns;
 - (ii) Streamflow conditions;
 - (iii) Accounting for the source of water for the proposed location; and
 - (iv) Any other accounting or environmental issues the Water Partnership deems appropriate.

The Parties agree to amend Exhibit B of the 2007 Settlement Agreement as needed to incorporate any new environmental criteria that may be developed by the Water Partnership under this Section 3.8.2 and that such criteria shall apply regardless of whether the return flows derived from this Supplemental Water are used to implement Interruptible Indirect Reuse under the Existing Water Sale Agreements or this SWSA.

3.8.3. New Austin Water Supplies

Return flows derived from a New Austin Water Supply are not subject to Section IV of the 2007 Settlement Agreement or this Section 3.8, except as follows:

3.8.3.1. Colorado River Supplies

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Austin agrees that it will only implement Indirect Reuse of return flows derived from a New Austin Water Supply from the Colorado River after satisfying the environmental criteria contained in Exhibit B of the 2007 Settlement Agreement, as it may be amended from time to time by the Water Partnership.

3.8.3.2. Other Sources

Austin's Indirect Reuse, if any, of Return Flows derived from a New Austin Water Supply from a source other than the Colorado River shall be implemented consistent with any necessary local, state, or federal regulatory approvals to implement such Indirect Reuse. Further, Austin agrees to work through the Water Partnership to ensure that such Indirect Reuse will not unreasonably interfere with LCRA's management and operation of the Colorado River.

3.9. LOCATION OF USE: SERVICE AREA AND INTERBASIN USE

3.9.1. Service Area

Austin shall use the Supplemental Water to be made available under the SWSA only within Austin's Service Area for its own purposes, as defined in Section 2(f) of this SWSA .

3.9.2. Use of Supplemental Water outside Colorado River Basin

3.9.2.1. General

Colorado River water made available under this SWSA may not be transferred or used outside of the Colorado River basin unless such transfer or use is within Austin's Service Area and is otherwise in strict compliance with LCRA Board Policies, LCRA water rights and a final permit, if required, for interbasin transfer (IBT) issued by the TCEQ.

3.9.2.2. Acquisition and Ownership of Interbasin Transfer Permit.

If all or part of any Supply Increment will be used by Austin outside the Colorado River Basin and all or part of that supply will derive from a water right owned by LCRA and requires an interbasin transfer permit to be obtained from the TCEQ, LCRA shall apply for and, if granted, use due diligence to maintain such interbasin transfer permit for the Term of this SWSA. To the extent that the Supplemental Water to be provided is derived from Austin's Existing Water Rights, Austin shall apply for and, if granted, use due diligence to maintain such interbasin transfer permit.

3.9.2.3. Rights Regarding Return Flows

a. Reliance by Third Parties

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In any permit proceeding involving the interbasin transfer of Supplemental Water for use outside the Colorado River Basin, the Parties agree to use their best efforts to reduce third parties' reliance on any Return Flows derived from Supplemental Water that are discharged outside the Colorado River basin by seeking as part of the permit(s) the legal right to implement Direct Reuse in accordance with state law and indirectly reuse such Return Flows within Austin's Service Area or the lower Colorado River basin consistent with this SWSA and the 2007 Settlement Agreement.

b. Wholesale customers

Austin agrees that it will not supply Supplemental Water on a wholesale basis to any third party entity where the wastewater derived from such Supplemental Water is discharged outside the Colorado River basin unless: (a) such transfer is authorized under state law; and (b) Austin includes in any contracts for new customers or any renewed contracts for entities that are existing customers on the Effective Date of the SWSA language giving LCRA the right to retrieve and return to the Colorado River basin, at its own expense, any Return Flows attributed to such transferred water.

c. Retail customers

In the event that the Return Flows derived from the Supplemental Water used by Austin to serve retail customers located outside the Colorado River basin but within its Service Area will not be reused by Austin for its own purposes within that portion of Austin's Service Area located outside of the Colorado River and will not be discharged by Austin into the Colorado River, Austin agrees that LCRA shall have the right, but not the obligation, to: i) enter, place facilities within, and collect from Austin's facilities such Return Flows, and ii) make use of such Return Flows as may be permitted under any existing or future water rights granted by the TCEQ. In the event LCRA exercises its rights under this section, then:

- (i) Austin shall provide to LCRA, at no charge or cost to LCRA, any easements reasonably necessary for LCRA to locate any collection facilities for such Return Flows within Austin's facilities;
- (ii) LCRA shall submit to Austin plans for any collection facilities to be located within Austin's facilities to collect such Return Flows from Austin's facilities in advance of construction thereof; and
- (iii) Austin agrees to not oppose any permit application submitted by LCRA to the TCEQ related to use of the wastewater.

d. Interruptible Indirect Reuse of Return Flows returned to basin.

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Return Flows returned to the Colorado River basin through the efforts of LCRA as contemplated under subsections (b) and (c) are not eligible for any credit for Interruptible Indirect Reuse by Austin unless the Return Flows are made available to Austin and Austin pays for such supply under this SWSA as Supplemental Water either from LCRA's Raw Water System or as a New LCRA Water Supply.

3.10. REQUIRED NOTICES.

3.10.1. Austin Notices

3.10.1.1. Austin shall notify LCRA in writing of its intention to use water from any Supply Increment (or portion thereof) under this SWSA not more than six months, nor less than two months, prior to Austin's initiation of use, which such use shall not commence except in accordance with Section 3.3 above, or on a schedule that the Parties mutually agree will allow for the orderly and efficient implementation of all actions by either Party necessary to implement such use.

3.10.1.2. For any Diversion Point located downstream of Lake Travis from which Austin intends to divert water, Austin shall notify LCRA's River Operations Center prior to making any diversion under this SWSA to ensure that LCRA timely releases any necessary water from storage or otherwise conveys water downstream that may be used to honor LCRA's commitment under this SWSA.

3.10.1.3. If, at any time after the Effective Date of this SWSA, Austin staff has determined the need to acquire or develop a New Austin Water Supply, then Austin shall notify LCRA of such determination at the next regularly scheduled meeting of the Water Partnership unless approval regarding the acquisition or development of a New Austin Water Supply will be sought from the Austin City Council or its delegated authority prior to such meeting, in which case Austin shall give notice to LCRA at least thirty (30) days prior to seeking any such approvals, or as soon as is reasonably practicable.

3.10.2. LCRA Notice of Potential LCRA Water Supply

If, at any time after the Effective Date of this SWSA, LCRA is requested by a third party to acquire or develop a Potential LCRA Water Supply on its behalf, and such request is not considered confidential by law, or LCRA staff independently determines the need to acquire or develop a Potential LCRA Water Supply to meet needs of other LCRA Raw Water System customers, then LCRA shall notify Austin of such request or staff determination at the next regularly scheduled meeting of the Water Partnership unless approval(s) regarding the acquisition or development of a Potential LCRA Water Supply will be sought from the LCRA Board or its delegated authority prior to such meeting, in

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which case LCRA shall give notice to Austin at least thirty (30) days prior to seeking any such approvals , or as soon as is reasonably practicable.

**3.11. AVAILABILITY OF WATER IMPACTED BY OPERATION,
DROUGHT, FLOOD, OR OTHER CAUSES**

3.11.1. Lakes Buchanan and Travis

To the extent that Supplemental Water is to be provided from Lakes Buchanan or Travis, and notwithstanding any other provisions herein, LCRA does not represent or warrant that water will be available at any particular time or place or that Lakes Buchanan and Travis will be retained at any specific level at any particular time. It is fully understood by the Parties hereto that the level of said lakes will vary as a result of LCRA's operation of its dams on the Colorado River or other natural or manmade causes (such as weather or climate change).

3.11.2. Curtailment During Shortage of Supply

Austin acknowledges and understands that the Supplemental Water made available by LCRA is subject to applicable laws respecting the distribution and allocation of water during shortages of supply.

3.12. DIVERSION, TRANSPORTION AND TREATMENT FACILITIES

Unless the Parties otherwise agree in writing, all diversion facilities, pipelines, pumps, and other transportation or treatment facilities used for purposes of diverting and transporting the water from the Delivery Point and for treatment and distribution of water to and within Austin's Service Area shall be installed, operated and maintained by Austin at Austin's sole expense and risk. Where appropriate and available, the Water Partnership shall seek opportunities for Austin to partner with other LCRA customers and other third parties that may reduce the costs of such facilities.

3.13. QUALITY

For Supplemental Water derived from the Colorado River portion of LCRA's Raw Water System, LCRA makes no representation as to the quality of the Supplemental Water made available under this SWSA, and Austin hereby releases LCRA and agrees to hold it harmless from any and all claims that Austin or Austin's customers or users have or may have against LCRA for any diminution or impairment of the quality of water made available under this SWSA.

For Supplemental Water not derived from the Colorado River portion of LCRA's Raw Water System, the Water Partnership shall address any potential water quality issues, including but not limited to, compatibility with Austin's water treatment system, as part of its recommended Supply Decision.

3.14. REGULATORY APPROVALS REQUIRED

(1) Austin acknowledges and agrees that the Supplemental Water LCRA makes available under this SWSA may be regulated in whole or in part by the State of Texas or local regulatory authorities, including but not limited to periodic review and amendment of the LCRA's Water Management Plan by the TCEQ. LCRA and Austin acknowledge and agree that LCRA shall be obligated to exercise due diligence to manage its water supplies within such regulatory regimes to make Supplemental Water available to Austin in accordance with the terms of this SWSA. Austin acknowledges and agrees, however, that LCRA's obligations under this SWSA may be affected by orders of the State of Texas, its agencies or local regulatory authorities and that the water to be supplied by LCRA under this SWSA may be subject to interruption, limitation, or curtailment in accordance with such orders or regulatory requirements. Orders of the State of Texas, its agencies or local regulatory authorities may constitute a "force majeure" event in accordance with Section 3.17 of this SWSA.

(2) LCRA's commitment to supply Supplemental Water shall be conditioned upon LCRA and Austin obtaining and maintaining in good standing any and all regulatory and statutory authorizations, if any, that may be needed to allow LCRA to provide the Supplemental Water from any and all supplies the Water Partnership has identified as appropriate supply alternatives, including but not limited to appropriate authorizations needed to implement Section 3.8 of this SWSA (if any), new permits, or amendments to LCRA's Existing Water Rights or Austin's Existing Water Rights. The Water Partnership shall develop a plan for the Parties to coordinate as necessary on this activity and to obtain such authorizations, provided those authorizations shall not injure either Austin's or LCRA's Existing Water Rights or contravene the 2007 Settlement Agreement. The Parties hereby agree to cooperate and support each others' efforts as may be necessary to implement such plan.

(3) If the Parties fail to obtain the required regulatory approvals, both Parties will use their best efforts to take any necessary actions to otherwise implement the terms of the SWSA.

3.15. WATER CONSERVATION AND DROUGHT CONTINGENCY PLANS

(1) Prior to using any water to be supplied under this SWSA, Austin shall submit for review and approval by LCRA a water conservation plan and drought contingency plan that comply with any and all requirements of LCRA's rules and regulations in existence at such time and any other regulations regarding water conservation or drought contingency planning that apply to the use of the water to be provided under this SWSA. Austin further agrees that the water used pursuant to this SWSA will be used in accordance with such approved plans and that such approved plans shall thereafter be incorporated into this SWSA as if set forth fully herein.

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(2) Austin acknowledges that LCRA, in accordance with applicable law, may require Austin to revise or update its plans on a periodic basis or in specific response to changes to LCRA's own rules and regulations or state law relating to water conservation measures and drought contingency planning. Austin agrees to amend its plans in accordance with such rules or regulations, as necessary, within the reasonable timeframes to be determined by LCRA.

(3) In the event that Austin agrees to furnish water or water services to a third party, who in turn will furnish the water or water services to an ultimate consumer, Austin agrees to include in its agreement with the third party provisions that obligate the third party to: a) develop and implement a water conservation program and drought contingency plan consistent with Austin's approved plans; and, b) amend its water conservation program and drought contingency plan to reflect amendments in state law, regulations or LCRA's rules and regulations within the same timelines that apply to Austin.

3.16. FUTURE REGULATIONS.

Austin agrees to comply with LCRA rules and any legal requirements applicable to raw water contracts that may be in effect when and after Austin begins to use water under the SWSA, including but not limited to any water conservation and drought contingency measures that may be required. The Parties agree and understand that LCRA will not enact regulations with the specific intent of imposing requirements on Austin that are more onerous than those imposed on its other customers unless LCRA is otherwise required to adopt such regulations by local, state, or federal law.

3.17. FORCE MAJEURE.

The term "Force Majeure" as used herein, shall mean those situations or conditions that are beyond the control of LCRA or Austin and that, after the exercise of due diligence to remedy such situation or condition, render LCRA or Austin unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes, but is not limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government or agencies of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, partial or entire failure of water supply insofar as each of the foregoing are beyond the reasonable control of the party in question. LCRA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to Austin due to any force majeure. LCRA shall use reasonable and timely diligence to repair or recondition LCRA's machinery, canals, or dams in the event such machinery, canals or dams are damaged or made unserviceable from any force majeure.

4. CONTRACT ADMINISTRATION

4.1. TERM OF CONTRACT.

This SWSA shall commence on the Effective Date, and end on December 31, 2100, unless terminated earlier by either party as provided below.

4.2. METHOD OF BILLING AND PAYMENT.

For each Supply Increment (or portion thereof), calculation of payments due and billing shall occur in accordance with the standard practices used by LCRA at the time the Supply Decision is made or in any other manner that is mutually agreed upon by the Parties to ensure that all of LCRA's reasonable and necessary costs are recovered as determined by Section 3.7 of this SWSA.

Austin understands and acknowledges that the standard rates, fees, and charges collected by LCRA for raw water provided from the LCRA system are set by LCRA Board of Directors, and that the Board may change such rates, fees and charges, or the underlying methodologies for determining them, under the SWSA from time to time.

4.3. MEASURING WATER.

For each Supply Increment (or portion thereof), the quantity of water used by Austin shall be measured by Austin using a measuring and recording devices or methods as are approved by LCRA (the "Meter") that complies with any applicable LCRA rule, or other applicable state law or regulation in effect at the time such use occurs. Such Meter shall be installed at Austin's expense. LCRA shall have the right to approve both the design of the Meter as well as the location of its installation. The Parties further agree to comply with all other standard requirements related to Meters that are required by LCRA rules or Board policy, or other local, state or federal laws or rules that are in effect at the time Supplemental Water is used under this SWSA, including but not limited provisions related to repair, replacement, testing, and inspection of Meters.

4.4. TERMINATION OF CONTRACT.

4.4.1. Termination After Supply Decision

4.4.1.1. As part of its recommended Supply Decision, the Water Partnership shall develop conditions under which termination of the Parties' obligations regarding a particular Supply Increment may occur, which conditions shall address, at minimum, appropriate mechanisms for cost recovery upon termination, and noncompliance with regulatory requirements related to the use or supply of the Supplemental Water

4.4.1.2. In the event TCEQ, other applicable regulatory body, or court of law

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denies or terminates for any reason a permit required to supply a particular Supply Increment under this SWSA, LCRA's obligation to provide such Supply Increment under this SWSA shall be suspended until such date as the TCEQ action is final and nonappealable and shall terminate thereafter without further action by either party, and shall be of no further force or effect.

4.4.1.3. Termination for nonpayment shall occur only in accordance with Section 4.5 of this SWSA.

4.4.1.4. Austin shall suspend all use of the Supplemental Water provided by LCRA for any Supply Increment that has been terminated under this SWSA immediately upon such termination. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized use of such Supplemental Water by Austin, including enforcement of any requirements of any water permit under which such use is being made.

4.4.2. Effect of Termination on 2007 Settlement Agreement

The 2007 Settlement Agreement shall remain effective notwithstanding the termination of this SWSA.

4.5. NON-PAYMENT.

(1) If LCRA determines that Austin has not paid the full amount owed for any payment due under Section 3.7 hereof within the time provided therefore, LCRA shall give written notice to Austin stating the amount LCRA has determined is due and unpaid. If LCRA gives notice as provided herein and Austin fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, LCRA may, at its sole option: (1) upon giving ten (10) days written notice to Austin terminate this SWSA without recourse; and/or, (2) request injunctive relief from a court of competent jurisdiction to prevent Austin from diverting additional water pursuant to this SWSA. Neither insolvency or bankruptcy shall excuse Austin from the obligation to pay amounts due under this SWSA.

(2) If Austin should dispute Austin's obligation to pay all or any part of the amount stated in any invoice or notice, Austin may, in addition to all other rights that Austin may have under law, pay such amount under protest in which case such amount shall be deposited by LCRA in an interest bearing account mutually acceptable to both LCRA and Austin pending final resolution of such dispute in accordance with Section 4.7. LCRA may not terminate this SWSA, or request injunctive relief to prevent additional diversions, for failure to pay the amount stated in any invoice or notice if Austin pays such amount under protest and until there is a final resolution of such dispute in accordance with Section 4.7 favorable to LCRA.

4.6. EQUITABLE REMEDIES.

Austin agrees that use of water by Austin without the authorization provided by this SWSA will result in damages to LCRA that cannot be adequately compensated by money alone. As a result, Austin agrees that LCRA shall have available to it equitable remedies, including injunctive relief against additional diversions or impoundments by Austin unless Austin demonstrates that it is otherwise authorized to divert or impound water. In addition, Austin agrees that the provisions of Section 4.7, will not apply to any legal action brought by LCRA seeking equitable remedies under this SWSA except as expressly provided by Section 4.5 regarding "NON-PAYMENT."

4.7. DISPUTE RESOLUTION.

4.7.1. Settlement By Mutual Agreement.

In the event any dispute, controversy or claim between or among the Parties arises under this SWSA or is connected with or related in any way to this SWSA or any right, duty or obligation arising hereunder or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the validity, interpretation, implementation, termination, cancellation or enforcement of this SWSA, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this subsection (1). In the event a Dispute or Controversy arises, any party shall have the right to notify the other party to such Dispute or Controversy that it has elected to implement the procedures set forth in this subsection (1). Within fifteen (15) days after delivery of any such notice by one party to the other regarding a Dispute or Controversy, the designated representatives of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Parties' designated representatives for such purpose or should no such meeting take place within such fifteen (15) day period, then any party may by notice to the other party, as the case may be, refer the Dispute or Controversy to the Executive Management Committee of the Water Partnership for resolution. Within fifteen (15) days after delivery of any such notice by one party to the other referring such Dispute or Controversy to the Executive Management Committee of the Water Partnership for resolution, the Executive Management Committee of the Water Partnership shall meet at a mutually agreed upon time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should mutual resolution and settlement not be obtained at the meeting of the Executive Management Committee of the Water Partnership or should no such meeting take place within such fifteen (15) day period (unless extended by mutual agreement), then any party may by notice to the other party, as the case may seek any other remedy available in law or equity.

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4.10. COMPLIANCE WITH FILING REQUIREMENTS. LCRA agrees to file a copy of this SWSA with the Executive Director of the TCEQ, P.O. Box 13087, Capitol Station, Austin, Texas 78711, it being fully recognized by Austin hereunder that the effectiveness of this SWSA is dependent upon compliance with the substantive rules and procedural rules for water rights of the TCEQ.

4.11. ACTUAL DAMAGES. NEITHER PARTY SHALL BE LIABLE OR HAVE ANY RESPONSIBILITY TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR DELAY-RELATED OR PERFORMANCE-RELATED DAMAGES INCLUDING, WITHOUT LIMITATION, LOST EARNINGS OR PROFITS. SUCH LIMITATION ON LIABILITY SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, STATUTE OR ANY OTHER THEORY OF LIABILITY. The provisions of this Section shall have no effect on the party's indemnity obligations under Section 4.12.

4.12. INDEMNITY

(1) To the extent authorized by law, Austin will indemnify and save LCRA harmless from any and all claims and demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property resulting from any and all actions and activities (or failure to act) of Austin under this contract except to the extent caused by LCRA's gross negligence or willful misconduct. Austin's pumping and related facilities shall be installed, operated and maintained by Austin at Austin's sole risk and expense. Nothing in this contract shall be construed as authorizing Austin, or recognizing that Austin has any rights, to install any equipment or improvements on property owned by LCRA or third parties.

(2) To the extent authorized by law, LCRA will save Austin harmless from any and all claims or demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damages to any property resulting from or in any way connected with any and all actions and activities (or failure to act) of LCRA under this contract.

4.13. AMENDMENT. This SWSA may not be modified or amended except by an instrument in writing signed by authorized representatives of the Parties.

4.14. BINDING EFFECT. The terms of this SWSA shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns.

4.15. COMPLETE CONTRACT. This SWSA, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the Supplemental Water to be provided under this SWSA and supersedes all prior contracts, agreements or understandings with respect to such Supplemental Water, both oral or written, except to the extent such agreements are specifically referenced herein. The Parties agree that

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Section IV.B of the 2007 Settlement Agreement related to the negotiation and terms of a supplemental water supply agreement is hereby superseded by this SWSA.

Each party agrees that the other party (and its agents and representatives) has not made, and has not relied upon, any representation, warranty, covenant or agreement relating to the transactions contemplated hereunder other than those expressly set forth herein.

4.16. EXISTING WATER SALE AGREEMENTS

Nothing in this SWSA is intended to modify or amend any portion of the Existing Water Sale Agreements and such agreements remain in full force and effect, except as clarified by the 2007 Settlement Agreement.

4.17. COUNTERPARTS. This SWSA may be executed by the Parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart.

4.18. FURTHER ASSURANCES. Each party agrees to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the terms and provisions of this SWSA.

4.19. GOVERNING LAW. This SWSA and the rights and duties of the Parties arising out of this SWSA shall be governed by, and construed in accordance with, the laws of the State of Texas, without reference to the conflict of laws rules thereof.

4.20. HEADINGS; TABLE OF CONTENTS. The headings of the Articles and Sections of this SWSA and the Table of Contents are included for convenience only and shall not be deemed to constitute a part of this SWSA.

4.21. INCORPORATION OF EXHIBITS. All Exhibits attached to this SWSA are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

4.22. INTERPRETATION AND RELIANCE. No presumption will apply in favor of any party in the interpretation of this SWSA or in the resolution of any ambiguity of any provisions thereof.

4.23. RELATIONSHIP OF PARTIES. This SWSA and the transactions contemplated hereunder are based upon the active participation of all Parties.

Neither the execution nor delivery of this SWSA, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this SWSA. Except as is expressly agreed to in writing in this SWSA, no party (or any of its agents, officers or

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Supplemental Water Supply Agreement
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employees) shall be an agent or employee of the other party, nor shall a party (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of the other party. Nothing contained in this SWSA shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement among LCRA on the one hand and the Austin on the other hand, except for the contractual arrangements specifically set forth herein.

4.24. SEVERABILITY. In the event that any provision of this SWSA is held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment to the provisions of this SWSA with the view to effecting, to the extent possible, the original purpose and intent of this SWSA, and the validity and enforceability of the remaining provisions shall not be affected thereby.

4.25. NO ADDITIONAL WAIVER IMPLIED. No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this SWSA, or of performance by the other parties of any duty or obligation under this SWSA, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

4.26. EFFECTIVE DATE

This SWSA shall be effective only when signed by both Parties. The Effective Date of this SWSA shall be the latest date on which Austin or LCRA has signed the SWSA.

September 19, 2007
SUBSTANTIALLY COMPLETE DRAFT – SUBJECT TO MINOR REVISIONS
Supplemental Water Supply Agreement
Page 32 of 32

CITY OF AUSTIN

By: _____
Toby Hammett Futrell
City Manager

Date: _____

Attest: _____

Secretary: _____

LOWER COLORADO RIVER AUTHORITY

By: _____
Joseph J. Beal, P.E.
General Manager

Date: _____

Attest: _____

Secretary: _____

McDill
Handwritten

Y J Development, Inc.
6156 Highway 290 West, Austin, TX, 78735
(512) 301-4818

David Anderson
Chairman, Environmental Board
City of Austin
PO Box 1088
Austin, TX, 78701

October 3, 2007

Dear Mr. Anderson:

My family and I would like to submit this commentary on the proposed changes to the City's Land Development Codes. We understand that our property on US 290 would be subject to the SOS Ordinance concerning redevelopment of existing business centers. Our family purchased this 1.76 acres in May of 2002 for investment purposes. Our family owns and operates six oriental restaurants in the City of Austin and Round Rock. Our business plan for this business park has been to continue to lease office and retail spaces to our existing clients. Our occupants have been good and responsible businesses in Oak Hill for many, many years. There is no strip business in our site, why does the city refer to our site as a "Strip Mall"?

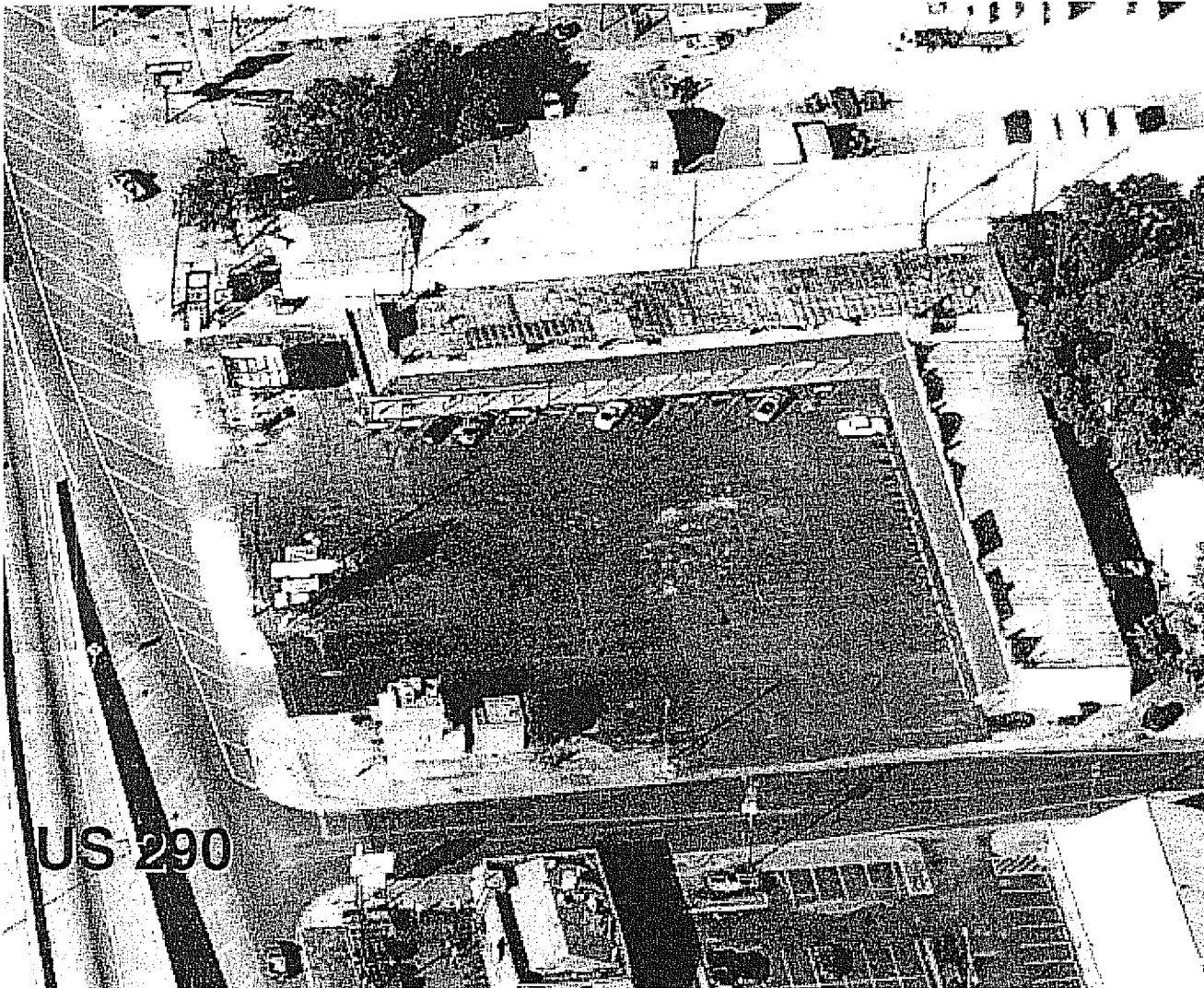
I have studied the attached summary of an aerial photo of our center and the suggested fees that would be necessary to redevelop the site. I have also read the proposed rules and they are unclear to me, and confusing to our family. I would think that there would be significant fees to engineers and architects as well as very high construction costs to meet the requirements of the 5-6 page "Draft" that I have read. If there can be no added retail space to produce added income, how would any owner pay for hard construction costs and then add on the \$ 76-89,000 listed on the "sample redevelopment plan" prepared by the city? I am very sorry I could not attend your meeting, but would wish to be notified of any further public meetings scheduled to discuss this topic

Respectively submitted,



Ann Yu, General Manager

Oak City Strip Mall



Site Information:

6154 W US Hwy 290

1.76 acres

84.4% IC

Built in 1970

No WQ Controls

Mitigation Land:

Modified 20% IC

SF Only

5.9 acres (\$89,000)

Max Irrigation

5.1 acres (\$76,000)

File Copy
Hood out
10/3/07

**Resolution in support of Council Member Leffingwell's
Re-Development Ordinance, 2007**

WHEREAS, Austin City Council Member Lee Leffingwell has proposed an amendment to the City's code commonly known as the "re-development ordinance;"

WHEREAS, in June of 2006, Council Member Leffingwell formed a group of affected stakeholders, known the Barton Springs Advisory Group, to study the issue of re-development in the Barton Springs Zone and make recommendations concerning the ordinance;

WHEREAS, the Barton Springs Zone Advisory Group, which included OHAN, met regularly for approximately one year, working actively on topics such as re-development in the Barton Springs Zone, reasons that re-development does not occur in Oak Hill and elsewhere due to existing laws, and the negative effects on both the environment and the community that result from aging properties that do not re-develop;

WHEREAS, due in large part to the restrictions of the Save Our Springs ordinance, Oak Hill contains numerous commercial properties that have not re-developed for many years;

WHEREAS, in many cases, these properties do not have modern water quality controls, allowing runoff water to enter the watershed and aquifer without treatment or removal of pollutants;

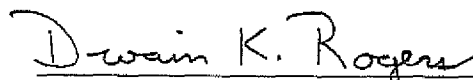
WHEREAS, this situation results in perverse incentives to avoid re-development, contributing to the shortage of commercial and retail services for Oak Hill while also allowing pollution that might be captured using modern water quality controls to continue;

WHEREAS, the re-development ordinance is intended and designed to allow for reasonable re-development of properties in Oak Hill and the rest of the Barton Springs Zone in a manner that creates a net environmental benefit;

WHEREAS, the re-development ordinance serves as a good first step toward a new approach to water quality and development in the Barton Springs Zone that emphasizes clustered development and managing total pollutant load instead of focusing primarily on impervious cover;

NOW, THEREFORE, BE IT RESOLVED, that the Oak Hill Association of Neighborhoods supports the re-development ordinance sponsored by Council Member Leffingwell and urges its adoption by the Austin City Council.

Adopted this 12th day of September, 2007



Dwain Rogers, OHAN President

From:
Monica
Moore

McDill Engineering
Engineering Consultants 10706 Indian Scout Austin, TX, 78736
(512) 288-2392

David Anderson
Chairman, Environmental Board
City of Austin
PO Box 1088
Austin, TX, 78701

October 2, 2007

Dear Mr. Anderson:

Thank you for considering this input concerning the proposed modification of the SOS Ordinance concerning redevelopment of existing business centers. I have been provided estimates, by the City of Austin staff, that there are approximately 200 sites existing in the watersheds that are out of SOS compliance of the ordinance, but grand-fathered due to various dates of approvals and construction. I also understand that the staff has compiled data to estimate the average site is approximately 3 acres in size with approximately 80,000 square feet of existing impervious cover. I have met and consulted with Dr. Michael Barrett, at University of Texas Water Resources Research Center and he referred me to a study completed and published November 1, 2006 by the City of Austin Environmental Division (copy of cover attached). That study recommended runoff ratios for the SOS zones, for 60% impervious cover to be approximately 0.4793. Applying that value for R_v into the State of Texas' formula (TCEQ) for total suspended solids the existing pollutant load for the average site calculates the pollutant loads for the average site listed above as: **1681 pounds per year. 200 sites, averaging this size would then produce about 336,366 pounds per year.** The same report appears to recommend changes in the Environmental Controls Manual. Will it change next?

The goal should include some incentive to reduce this **168 tons** of pollutants being flushed down the aquifer, Barton Creek, Williamson Creek, etc. The proposed rule does not allow for any added credits if a redevelopment replaces aged **septic tanks and drain fields** and reroute and finance pipelines to gather and drain this effluent into a public waste water line. This proposed rule also does not clearly provide calculation processes for **partial redevelopment**. Some sites can only create flow directions and capture mechanisms for only portions of those particular sites.

I would propose that the rule be re-drafted to include provisions that would encourage and provide incentives for redevelopment. The present approach appears to only attempt to force old grand-fathered commercial businesses to expend completely unreasonably high costs, attempt to process through a nearly impossible maze of approvals and then be burdened with an added penalty, just to try to clean up some existing flows into the creeks and aquifer.

Thank you,

Tom McDill

STORMWATER RUNOFF QUALITY AND QUANTITY FROM SMALL WATERSHEDS IN AUSTIN, TX



City Of Austin
Watershed Protection Department
Environmental Resources Management Division



Water Quality Report Series
COA-ERM/WQM 2006-1

November 1, 2006

THE UNIVERSITY OF TEXAS AT AUSTIN



Department of Civil Engineering

Michael E. Barrett

Research Associate Professor

Pickle Research Campus #119
R8000
Austin, Texas 78712

512-471-0935
FAX 512-471-0072
mbarrett@mail.utexas.edu



Hand out
10/3/07

September 19, 2007

Kimco Realty Corporation manages and leases the retail strip center, Center of the Hills, located at the intersection of US Hwy 290 and State Hwy 71 on behalf of the property owner, Kimco Austin LP. We currently have no plans to re-develop the property due to city ordinance restrictions that cause such opportunities to be unfeasible. We would support efforts to reasonably modify city ordinances to allow for property improvements that would be both beneficial to property owners and the city.

We have had the chance to review and study the proposed draft Ordinance Section 25-8-27 impact upon our property should we consider a re-development. The said ordinance places unreasonable site restrictions and costs to the extent that a re-development effort would be rendered mute and economically unfeasible. If the ordinance in its current draft version were to be approved, we would continue to have no re-development plans.

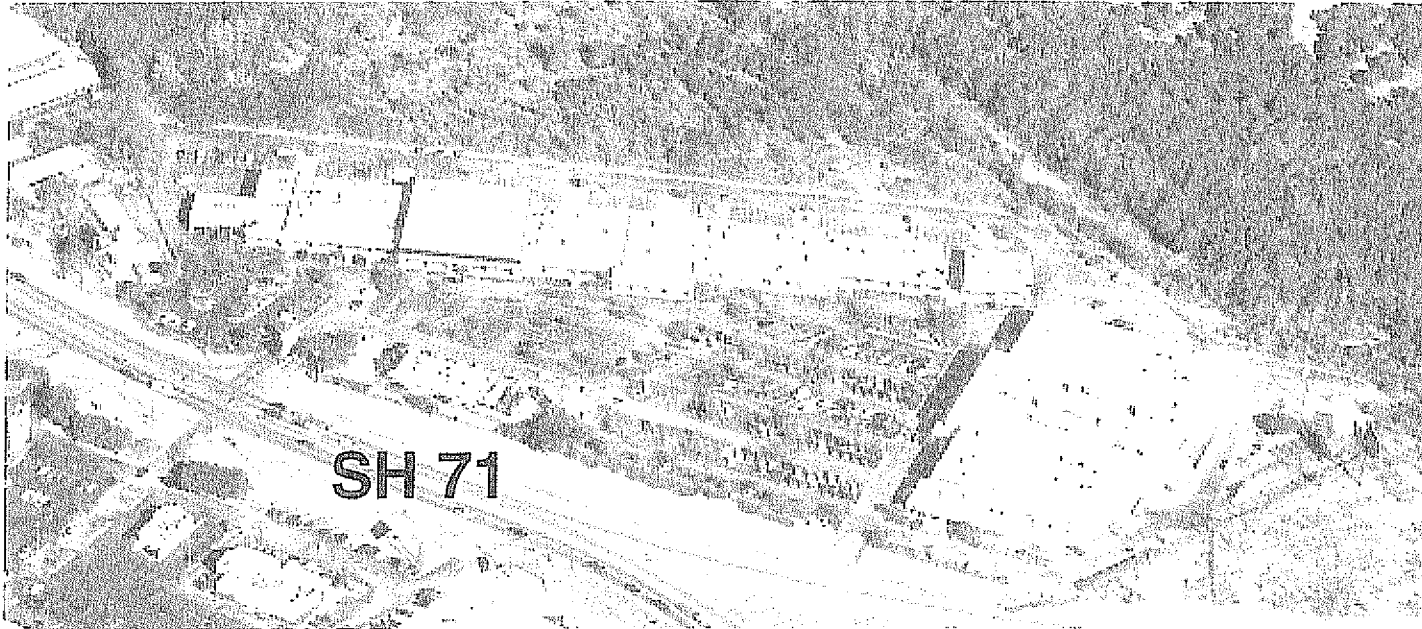
An ordinance to encourage property owners to re-develop should be structured to allow both the city and owners to mutually benefit while improving the community quality of life.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Tilley'.

Gary P. Tilley, CCIM
TX/OK Regional Director of Real Estate
Kimco Realty Corporation

HEB (Center of the Hills)



Site Information:

7010 W State Hwy 71
12.56 acres
91.0% IC
Built in 1985
No WQ Controls

Mitigation Land:

Modified 20% IC
SF Only
46.93 acres (\$704,021)
Max Irrigation
43.37 acres (\$650,476)

CENTER OF THE HILLS

AUSTIN, TX 589

PD: 81706

